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No. 698

United States Court of Appeals for the Fourth Circuit

No. 7463

EVA ALLEN, ET AL.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

APPENDIX TO BRIEF FOR APPELLEES

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Dated September 30, 1957.

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EXHIBIT 2 TO PETITION OF DEFENDANTS
(Filed July 18, 1955)

AFFIDAVIT OF THOMAS J. McILWAINE

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

Thomas J. McIlwaine, being first duly sworn, deposes and says:

(1) I am Division Superintendent of Schools for Prince Edward County, Virginia, and have held that position for more than 35 years. I testified before this Court in the hearing of this cause on February 25, 1952, and thereafter, and my testimony appears in the printed record filed in the Supreme Court of the United States. My background and experience are outlined in that testimony and since testifying I have been continuously in the same position as Division Superintendent of Schools for Prince Edward County.

(2) When I testified before this Court on February 25, 1952, the Robert R. Moton High School for Negro children in Prince Edward County was in the course of construction. That school building was completed in the early fall of 1952 and was opened for the school session 1952-1953, and it has been continuously operated since that time. The school was built and equipped at a cost of approximately $900,000. In my opinion, there can be no question but that the building provides for Negro high school students in Prince Edward County facilities which are equal or superior to any facilities there available for white children; and this applies to building, equipment and curriculum. In addition, the facilities available for transportation of Negro high school students in Prince Edward County are now in my opinion

equal to or better than any such facilities provided for white children; and if the equality of facilities were still an issue in this proceeding, I believe the overall facilities for Negro high school students are better than those for white high school students.

(3) For the sessions 1952-1953 and 1953-1954 the high schools of Prince Edward County were operated as they had been operated for years prior to that time with the improvements in facilities and other matters referred to above. In the spring of 1954 I prepared the school budget and the budget was approved by the County School Board. Although there was at that time growing apprehension among the people of Prince Edward County and its governing bodies that the pendency of this proceeding presented a definite threat to the continuation of the public high schools of Prince Edward County, the Board of Supervisors nevertheless approved the school budget for the session 1954-1955, laid the necessary levies for local taxes and appropriated the necessary funds for the operation of the high schools for that year. This was done before the decision of the Supreme Court on May 17, 1954. Immediately after that decision, on the advice of the State Board of Education and of our counsel, it was determined that the high schools of the County should be operated for the session 1954-1955 just as they had been previously operated, and the Board of Supervisors took no further action in regard to the school budget.

(4) The school budget for the session 1954-1955 called for expenditures totaling $628,420. Of that amount it was estimated that $289,300 or 46% of the entire budget would be received from State and Federal funds and that $339,120

or 54% of the entire budget would be received from local taxes and other funds.

(5) The high schools were operated for the session 1954-1955 on the same basis on which they had been theretofore operated. The apprehension as to the future continued and grew. Nevertheless, as required by law, I prepared and presented to the County School Board in March, 1955, the budget proposed for the school year 1955-1956. That budget was approved by the School Board in March. It provided for total expenditures of $685,100 of which $308,600 or 45% was to come from State and Federal funds, and $376,500 or 55% was to come from local taxes and other local funds. The budget was approved by the County School Board and afterward was presented to the Board of Supervisors at a meeting in March, 1955. Another meeting between the Board of Supervisors and the County School Board was held on March 10, 1955, and at that meeting the Board of Supervisors gave tentative approval to the school budget, subject to the public hearing on the county budget required by law, which was to be held in April, 1955.

(6) On April 10, 1955, the public hearing was held on the County budget. That hearing was attended by about 50 people, citizens of every section of the County. At the hearing those citizens made it clear that they were firm in opposition to schools conducted upon other than a racially segregated basis, and they requested the Board of Supervisors to postpone final action on the tax levy and school appropriation until the Supreme Court had rendered its decision in this case. Accordingly, the Board of Supervisors adopted a resolution postponing action on the tax levy and school appropriation.

(7) During the period following April 10, 1955, there

was growing unrest among the citizens of Prince Edward County as to the future of the public schools of the County, with many expressions of opinion that racially integrated schools should not be attempted. During this period the School Board nevertheless made tentative appointments of teachers for the session 1955-1956, subject to the availability of funds. No final appointments could be made until funds became available. The School Board proceeded also with plans to operate the school during the session 1955-1956 in all respects as they had been operated in prior years.

(8) On May 31, 1955, the decision of the Supreme Court was announced and it was immediately communicated to County officials. The Board of Supervisors had previously scheduled a meeting for the evening of May 31, 1955, to consider the school budget, the levy of taxes and the appropriation of funds for school purposes, that being the last day on which the Board of Supervisors could legally levy taxes for the year 1956. The meeting was attended by several hundred people from all sections of the County. At the meeting, the Chairman of the County School Board stated to the Supervisors that on the advice of counsel he recommended that the necessary tax be levied for school purposes and that all necessary school funds be appropriated with the understanding that the schools would be operated during the session 1955-1956 on a racially segregated basis in the same manner in which they had previously been operated. The statement by the Chairman of the School Board precipitated statements by a number of citizens that they opposed any appropriation of school funds at that time because they wanted it to be made certain and positive that schools were to be operated on a racially segregated basis before any appropriations were made. After a general public discussion of more than an hour the Board of Supervisors ordered that

the school budget be not approved, and that the sum of $150,000 be appropriated for school purposes for the session 1955-1956, in lieu of the sum of $327,500 requested in the budget. An excerpt from the minutes of the meeting of the Board of Supervisors on May 31, 1955, is appended hereto as Exhibit A.

(9) The sum of $150,000 appropriated by the Board of Supervisors for the session 1955-1956 is inadequate for the operation of the schools of the County. Approximately $50,000 must be applied to debt service. Maintenance of buildings and grounds and other fixed charges will require a substantial additional sum. State and Federal funds for operation of the schools will not be available in the required amount unless County funds are appropriated. Accordingly, there is no adequate sum of money available for the payment of salaries to teachers and without teachers the schools cannot be operated.

(10) Early in June, 1955, after public notice there was held in Jarman Hall at Longwood College in the Town of Farmville a public meeting of white citizens of the County interested in the public school system. That meeting was attended by approximately 1,500 persons. Of those, a large majority were parents or guardians of children in the public schools. It was the unanimous opinion of all those who expressed themselves at the meeting that integrated schools were an impossibility for Prince Edward County and that the only way in which schools could be operated was on a racially segregated basis. The suggestion was made that it be recommended to the Board of Supervisors that operating funds for school purposes be released to the School Board from time to time during the session 1955-1956, so long as the schools were operated on a racially segregated basis. A

resolution to that effect was, however, defeated overwhelmingly, it appearing that the resolution received the support of less than 5% of the persons present. A further resolution was then passed that a fund be raised to guarantee their salaries for the session 1955-1956 to the white teachers of Prince Edward County schools with the understanding that if racially segregated schools could be operated during that session, and if the Board of Supervisors appropriated funds for the salaries of teachers and for the operation of the schools during that session, the funds so raised would not be used. The resolution was overwhelmingly adopted and a committee was appointed to proceed with the raising of the fund and the organization of a corporation to hold and disburse the fund. After adoption of the resolution subscription blanks prepared in advance were distributed among those present, and subscriptions were received at the meeting approximating a total of $50,000. Additional subscriptions in substantial amounts have since been received. It was estimated at the meeting that $212,000 would be required. Subscriptions to the fund now total well over $175,000.

(11) During the month of June, 1955, and during the first two weeks of July, 1955, the School Board continued as usual its preparation for the operation of high schools in the County for the session 1955-1956 with the exception of issuing contracts to teachers. Such preparation has meant routine maintenance and repairs which will be required for operation of schools during the session 1955-1956. The School Board is ready and prepared to operate the high schools in Prince Edward County for the session 1955-1956 if funds for their operation are available, and if schools on a racially segregated basis can be operated during that session without violation of an order of this Court. All pupils for the high schools have been assigned to the schools, to their subjects and to their home rooms.

(12) I have examined the list of plaintiffs in this case who are alleged to have been at the time students in the Prince Edward County schools. Each of them has either been graduated from high school or has left the school voluntarily, and none of them will be a student in the Prince Edward County schools if the schools are operated during the session 1955-1956.

(13) The high schools of Prince Edward County can be operated only within the framework of the statutes of Virginia relating to the operation of schools. The decision of the Supreme Court of May 31, 1955, will obviously require substantial modification in those laws. The Prince Edward County School Board is not authorized and empowered to make substantial changes in the method of operation of the high schools of the County until the policy of the State has been made known. Accordingly, the high schools of Prince Edward County can be operated during the session 1955-1956 only as racially segregated schools. If they cannot be operated in that way they cannot be operated at all, and they will be closed during that session. In that event, the pupils who would normally attend school during that session will lose an entire year of their education, and many of them who would otherwise continue their studies will not return to the schools if they are reopened at a later date, since they will then have obtained jobs or otherwise divorced themselves from the normal course of education.

(14) In conclusion, I would not like to underestimate in my statement to the Court the difficulties that are being faced in Prince Edward County as a result of the school decision by the Supreme Court. Racial feeling is running high. Relationships between the two races, which had been amicable for decades, have been strained to the point of open

hostility. The people of Prince Edward County recognize the desirability of the continuance of their public school system for the good of their own children and for the economic progress of their community, but it has become manifest that they are determined to forego the benefit of a public school system if that benefit can be achieved only through racially integrated schools during the session 1955-1956.

(15) Insofar as the session 1955-1956 is concerned, the State of Virginia has not yet had an opportunity to reorganize its school laws in the light of the decisions of the Supreme Court, and the question now facing this Court as to the high schools in Prince Edward County is not whether or not they are to be operated on a racially integrated basis. The only question that this Court can decide now is whether the high schools in Prince Edward County shall be operated on a racially segregated basis during the session 1955-1956 until the State of Virginia has had an opportunity to reorganize its school laws or whether the high schools shall be closed.

EXHIBIT A

Excerpt from the Minutes of a Meeting of the Board of Supervisors Held on May 31, 1955:

"At a meeting of the Board of Supervisors of Prince Edward County held pursuant to order of adjournment entered May 5, 1955, this 31st day of May 1955, at 8:00, P.M., the time designated by the Chairman of the Board, and of which written notice has been communicated to the several members of the Board, there were present:

Edward A. Carter, Chairman
W. W. Vaughan
Chas. W. Gates
T. D. Dillon
John G. Bruce
Hugh M. Jenkins

Budget for 1955-1956:

This being the day set for the further consideration and adoption of the Budget of estimated receipts and expenditures for General County, Public School and Welfare purposes for fiscal year beginning July 1, 1955; and a large group of citizens, said to be composed of residents and taxpayers from each Magisterial District of this County, appeared at this time and urged the Board not to fix our County levy for School Purposes for the year 1955-1956 session;

And on motion of Mr. Bruce, seconded by Mr. Gates and carried unanimously, it is ordered that the School Budget as heretofore presented by Superintendent of Schools T. J. McIlwaine for the year 1955-1956 at the March meeting be not approved, and that the Board of Supervisors refuses to make such cash appropriation as is recommended and requested by Superintendent of Schools T. J. McIlwaine and the School Board, and that further only the sum of $150,000 be appropriated for school purposes for the session 1955-1956 instead of the sum of $327,500 requested by said Superintendent."

EXHIBIT 3 TO PETITION OF DEFENDANTS
(Filed July 18, 1955)

AFFIDAVIT OF B. CALVIN BASS

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

B. Calvin Bass, being duly sworn, deposes and says:

(1) I am Chairman of the County School Board of Prince Edward County, Virginia, and have held that position since July 1, 1954. I have been a member of the School Board since March, 1951.

(2) The office of Chairman of the School Board is filled by annual elections in July of each year. I have continued as Chairman of the School Board past the July meeting of the Board, but at the time I accepted election as Chairman I stated that I would serve for only one year. Because of my health and on the advice of my physician I do not propose to continue as Chairman of the School Board after the conclusion of this hearing, and I propose to resign as Chairman at the next meeting of the Board, although I plan to retain my membership on the Board.

(3) I was born in Prince Edward County in 1910. I attended Maryville College in Tennessee and was graduated with the degree of Bachelor of Arts in 1931. I taught in the public schools in Tennessee from 1931 to 1942, was principal of a school for the last three years of that period, and was acting assistant superintendent during the last year. During that period I was awarded the degree of master of arts from the University of Tennessee. In 1942 I returned to Prince Edward County and taught in the Prince Edward County schools during the session 1942-1943. During World War II I was an assistant professor of physics at

Hampden-Sydney College, and since the War I have assisted at Hampden-Sydney from time to time by teaching courses in physics and chemistry. My principal occupation is that of a farmer and dairyman.

(4) I have reviewed the affidavit of Thomas J. McIlwaine which will be filed in this proceeding along with my affidavit. I am familiar with most of the matters stated in the affidavit of Mr. McIlwaine and I am in full agreement with his statements of fact and also with his expressions of opinion. Any further recitation of the facts by me in this affidavit would be simply duplication of his statements.

(5) It is my firm conviction that the vast majority of the white citizens of Prince Edward County are determined at this time that high schools shall not be operated on a racially integrated basis during the session 1955-1956. It is further my opinion that the views of the majority of the white citizens are shared by the entire Board of Supervisors of the County. In my opinion, the Board of Supervisors refused to appropriate funds for operation of the schools during the session 1955-1956 because they apprehended that this Court might in some way order the operation of integrated schools during the session 1955-1956, and apprehended further that a violation of that order might subject the superintendent of schools and the County School Board to substantial penalties in the form of fines or imprisonment. If the Court will authorize the operation of the schools in Prince Edward County during the session 1955-1956 in the way they have been operated heretofore, while the State of Virginia is developing a plan of adjustment for the operation of schools throughout the State, I believe that the schools in the County can be operated during the session 1955-1956. On the other hand, if the Court should deny

to the School Board the right to operate racially segregated schools during the session 1955-1956, it is my opinion that the public schools will not be operated in Prince Edward County during that session.

EXHIBIT A TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFIDAVIT OF LESTER E. ANDREWS

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

Lester E. Andrews, being first duly sworn, deposes and says:

(1) I was born in Chesterfield County, Virginia, in the year 1915 and have lived in Virginia all my life. Since the year 1928 I have lived in Farmville in Prince Edward County, Virginia, and I have a wide acquaintance within that County and am thoroughly familiar with public sentiment therein. I am Vice-President of Farmville Manufacturing Company, Incorporated, which conducts a general mercantile and building supply business, and my corporation does the largest business of that kind in Prince Edward County and the adjacent area. I am also a director of Peoples National Bank in Farmville.

Since the year 1954 I have been a member of the School Board of Prince Edward County and I am now Chairman of the School Board, succeeding Mr. B. C. Bass who was Chairman of the School Board when this matter was last before the Court on July 18, 1955. I am the father of two boys who attend one of the Farmville elementary schools.

(2) Personally, officially and as a citizen I am vitally interested in the continuance and maintenance of an efficient and constructive school system in Prince Edward County. I am familiar with this court proceeding and I have reviewed especially the petition of the defendants and accompanying affidavits which were filed in this proceeding on July 18, 1955. I am generally familiar with the facts set forth in that petition and in the affidavits and the facts are correctly alleged in the petition and correctly set forth in the affidavits.

(3) I realize, of course, that the Court will now enter such an order as the Court deems necessary to serve the best interests of all the children of Prince Edward County, and in order to serve those interests and prevent a discontinuance of the public schools in Prince Edward County for an indefinite period, the schools in the County must be operated during the session 1956-57 as they have heretofore been operated; otherwise the schools will be closed and all the children of the County will be deprived of an opportunity for a public school education for an indefinite period.

(4) The School Board has submitted its budget to the Board of Supervisors for the session 1956-57, but the Board of Supervisors has declined to approve and adopt the budget in view of the threat of integration and the present undetermined policy of the State of Virginia regarding its public school system. The Board of Supervisors, however, has by recorded resolution signified its intention to appropriate funds for the operation of the schools on a month-to-month basis, thereby retaining control of funds for the operation of the public schools for a normal term. This action was in response to the overwhelming sentiment of the people of Prince Edward County who will not counte-

nance appropriation of funds for integrated schools. All local funds for public school purposes must be provided by the Board of Supervisors.

(5) The public schools of Prince Edward County are maintained and operated by the Department of Education of the State of Virginia through the County School Board as its administrative agency. The School Board is subject to the direction and control of the State Board of Education and can operate the schools of Prince Edward County only in conformity with the policy and subject to the rules and regulations of the State Board of Education. The public schools of Prince Edward County are now being so operated and cannot be operated otherwise until the policy of the State for its public school system is fixed and determined.

(6) The Governor of Virginia has made public announcement that he will call a special session of the General Assembly not later than September 6, 1956, to enact appropriate legislation in view of the Supreme Court decisions and the recent amendment to the Constitution of Virginia. Until the public school policy of Virginia is fixed and determined the School Board of Prince Edward County can operate the public schools in the County only as they have heretofore been operated, and if any order be entered now to operate the schools otherwise the schools will be closed for an indefinite period, thus denying educational opportunities and benefits to all of the children of the County.

(7) My statement that the schools of the County will be closed if the local authorities be ordered to operate them in the session 1956-57 otherwise than as they have heretofore been operated is based upon my knowledge of the overwhelming public sentiment of Prince Edward County. More than 4,100 citizens of Prince Edward County have heretofore filed a declaration stating that in the event of an order

directing operation of the public schools otherwise than as they have heretofore been operated, the public schools should be closed indefinitely, and those signing the declaration have called upon the Board of Supervisors to withhold public school revenues in order to carry their wishes into effect. The number of those signing the declaration exceeds by more than one thousand the highest number of votes ever cast in any election in Prince Edward County.

(8) The tension described in the affidavits which were filed in the proceeding on July 18, 1955, has increased since that date, and in my opinion any attempt to force integrated public schools upon Prince Edward County would result in disorder and chaos. I am convinced that the schools of Prince Edward County can be operated for the session 1956-57 only on that basis upon which they have heretofore been operated.

(9) Plans for operating public high schools in Prince Edward County for the session 1956-57 have been completed. Educational facilities, opportunities and offerings are such as to furnish no valid claim of discrimination against the members of any race. Facilities provided for Negro students under these plans are superior to the facilities provided for the white students, and in my opinion such plans are in accordance with the views of the vast majority of the Negro as well as the white citizens of Prince Edward County.

(10) In addition to the foregoing, I have reviewed the affidavit of Mr. T. J. McIlwaine which will be filed in this proceeding along with my affidavit. I am familiar with the matters stated in the affidavit of Mr. McIlwaine and I am in full agreement with his statement of facts and also with his expressions of opinion.

EXHIBIT B TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFIDAVIT OF B. CALVIN BASS

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

B. Calvin Bass, being duly sworn, deposes and says:

(1) I am Vice Chairman of the County School Board of Prince Edward County, Virginia, and have held that position since August, 1955. I have been a member of the School Board since March, 1951. On July 18, 1955, the date of the last hearing of this proceeding before this Court I was Chairman of the County School Board of Prince Edward County, Virginia, and filed an affidavit at the time of such hearing.

(2) I have reviewed the affidavit filed by me on July 18, 1955, and believe the statements and conclusions expressed therein to be true as of this date.

(3) I have also reviewed the affidavit of T. J. McIlwaine and Lester E. Andrews which will be filed in this proceeding along with my affidavit. I am familiar with most of the matters stated in those affidavits and am in full agreement with the statements of fact and expressions of opinion contained therein. Further recitation of such facts by me would simply duplicate the statements of Mr. McIlwaine and Mr. Andrews.

EXHIBIT C TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFFIDAVIT OF JAMES T. CLARK

James T. Clark, being first duly sworn, deposes and says:

(1) I am the Sheriff of Prince Edward County, Virginia, and have been Sheriff since 1944. Prior to my election as Sheriff I was the Deputy Sheriff for eight years. I have lived in Prince Edward County all my life and in the course of my duties I am required to know many of the residents of that County.

(2) Since the schools of Prince Edward County have been in litigation in regard to racial segregation, I have noticed an increase in tension between the races in the County, and it has particularly increased during the past twelve months. Never in my experience in Prince Edward County has the feeling of tension between the races been as strong as it is in the County today.

(3) I have two Deputies who work full time for me and several Deputies who are employed on a part time basis. The Town of Farmville has a police force consisting of seven officers. There are three State policemen living in the County. There are no other law enforcement officers in the County. The County has an area of 356 square miles and a population of approximately 15,000. Of these about 50% are white and 50% are Negro. There is a National Guard Armory in the Town of Farmville.

(4) I do not propose to state in detail my views as to the law enforcement situation that would exist in Prince Edward County in the event that the public schools should be integrated by court decree or otherwise since I believe that integration of this kind during the year 1956-57 would be

impossible. In the event of such integration the law enforcement problems would be of such a nature that it would be impossible, in my belief, for me and for the other law enforcement officers in the County to preserve order.

(5) In the event that the public schools in Prince Edward County are closed for the session 1956-57 I believe that problems of law enforcement in Prince Edward County would be very substantially increased. I know of arrangements that have been planned to keep white children in private schools, at least for most of the school session, but I know of no similar arrangements for Negro children.

(6) If Negro school children, particularly those of high school age, do not go to school and are left to their own devices for the full year, it is my belief that the number of delinquent children will be tremendously increased, and that offenses against person and property will grow to a very great extent. It has been my experience that children of this age who are not actively employed often get into trouble and I foresee that the number of crimes in Prince Edward County will rise very sharply. This would be all the more true in the present atmosphere of tension between the races in the County.

EXHIBIT D TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFIDAVIT OF CARTER O. LOWANCE

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

Carter O. Lowance, being duly sworn, deposes and says:

I am Executive Secretary to Thos. B. Stanley, Governor of Virginia. Attached hereto and marked Exhibit 1 is a

true and correct copy of a statement issued by the Governor of Virginia over his signature on June 6, 1956.

EXHIBIT 1

Since the decision of the Supreme Court of the United States in the school segregation cases, on May 17, 1954, Virginia has continued the operation of its public schools on the same basis as before. However, the decision and subsequent decree created problems of great importance to the future operation of the schools and of concern to every citizen of Virginia.

To retrace the history of events since May, 1954, in August of that year I appointed a Commission on Public Education, composed of 32 members of the General Assembly, to study the effects of the decision on Virginia and to bring in a report on its findings and recommendations. The Commission's report was submitted to me on November 11, 1955. On November 14, 1955, I issued a call for an extra session of the General Assembly, which convened on November 30 and enacted legislation submitting to the people the question of calling a constitutional convention to amend Section 141 so as to permit the appropriation of public funds for educational purposes in nonsectarian private schools and institutions, in addition to those owned or exclusively controlled by the state or political subdivisions. The voters of Virginia on January 9, 1956, authorized the constitutional convention, which met and amended Section 141 during its deliberations March 5-7, 1956 This action was in accordance with the recommendations of the Commission on Public Education.

The date of adjournment of the regular session of the General Assembly was March 10, 1956, and obviously it was impracticable, if not impossible, to have adequate con-

sideration of other recommendations of the Commission on Public Education in the three days remaining after the conclusion of the Constitutional Convention. It also should be recalled that the Commission had strongly recommended that its other recommendations be deferred until after action of the constitutional convention, inasmuch as the recommendations were so interrelated it would be impractical to consider them until the constitutional question had been decided.

Since adjournment of the regular session, I have had many inquiries concerning further action to deal with these school problems, and have had recommendations for and against an extra session of the Assembly. In the light of developments and the desire of many localities for State guidance in formulating future policy, I requested the Chairman of the Commission on Public Education to call a meeting of the Executive Committee of the Commission. This was done and I met with the Committee on May 17 and asked that the Committee, and the full Commission, if the Committee saw fit, consider events since the Commission report of November 1955, together with any new information or suggestions that merited study since its recommendations were formulated. The Committee met again on May 28 and then called a meeting of the full membership of the Commission for Monday, June 4. At this meeting, the Commission recommended "that a special session of the General Assembly be called to consider the report heretofore made by the Commission on Public Education and such other matters in connection therewith as may be presented".

I am convinced that the General Assembly should be convened to consider the recommendations of the Commission on Public Education, which I am confident can be restudied and completed within the reasonably near future, and any other proposals dealing with the public schools which mem-

bers of the General Assembly or the Governor deem deserving of consideration.

Accordingly, it is my purpose to convene the General Assembly in extra session within the next ninety days for the reasons just stated. This will afford the elected representatives of the people the opportunity to consider all recommendations which may bear promise of aiding in the solution of the increasingly difficult problems arising from the Supreme Court decision.

Thos. B. Stanley
Governor

June 6, 1956

EXHIBIT E TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFIDAVIT OF THOMAS J. McILWAINE

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

Thomas J. McIlwaine, being first duly sworn, deposes and says:

(1) I am Division Superintendent of Schools for Prince Edward County, Virginia, and have held that position for more than 35 years. I testified before this Court in the hearing of this cause on February 25, 1952, and my affidavit was presented to the Court on July 18, 1955. My background and experience are outlined in that testimony and affidavit and I have remained continuously in the same position as Division Superintendent of Schools for Prince Edward County.

(2) For the session 1955-1956 the high schools of Prince Edward County were operated as they had been operated for years prior to that time with one significant exception. The Board of Supervisors on May 31, 1955, refused to approve the budget of the School Board as presented to it with the approval of the School Board. Instead, the Board of Supervisors appropriated at each of their monthly meetings during the school term only the amount necessary to operate the schools for the succeeding month. The schools were, nevertheless, operated throughout the session on a highly satisfactory basis, although certain expenses were curtailed throughout the school system.

(3) As required by law, I prepared and presented to the County School Board in March, 1956, the budget proposed for the school year 1956-1957. That budget was approved by the School Board in March. It provided for total expenditures of $715,227.65 of which $328,785.00 or 46% were to come from State and Federal funds, and $386,442.65 or 54% were to come from local taxes and other local funds. The budget was approved by the County School Board and afterward was presented to the Board of Supervisors at a meeting on April 1, 1956. The budget was advertised in accordance with law and a public hearing was held on May ..., 1956. The Board of Supervisors then took no action on the school budget until May 29, 1956; at that time they rejected the budget and adopted a resolution whereby appropriations would be made on a month-to-month basis for the session 1956-57.

(4) Teachers have been tentatively appointed for the 1956-57 session. Contracts have not yet been issued but are to be issued shortly, to include a termination provision on

one month's notice. Although all teaching positions have not been filled, the number of existing vacancies is not out of line with our past experience.

(5) With one exception all high school students of both races who are expected to enter high school next session have been registered and assigned with parental approval to the schools that they will attend.

(6) In summary, the schools of Prince Edward County are in full readiness for operation during the 1956-57 session in the same manner in which they were operated in 1955-56, and there is every reason to believe that they can be operated successfully on that basis.

(7) The schools of Prince Edward County can be operated only within the framework of the statutes of Virginia relating to the operation of schools. The decision of the Supreme Court of May 31, 1955, will obviously require substantial modification in those laws. The Prince Edward County School Board is not authorized and empowered to make substantial changes in the method of operation of the schools of the County until the policy of the State has been made known. No changes in school statutes relative to Prince Edward County have yet become effective, although such changes are generally forecast in the light of the Governor's statements as to a forthcoming special session of the General Assembly. Accordingly, the high schools of Prince Edward County were operated during the session 1955-1956 as racially segregated schools and can be operated during the approaching session only in the same manner. If they cannot be operated in that way they cannot be operated at all, and they will be closed during that session because funds to operate the schools will not be appropriated

by the Board of Supervisors, and without such funds operation is impossible. The effect of closing the schools would be disasfrous. The pupils who would normally attend school would lose an entire year or more of their education, and many of them who would otherwise continue their studies would not return to the schools if they are reopened at a later date, since they will then have obtained jobs or otherwise separated themselves from the normal course of education.

(8) In conclusion, I would like to state again that racial feeling is running high in Prince Edward County. Relationships between the two races, which had been amicable for decades, have continued to be strained. The people of Prince Edward County have made it clear that they are determined to forego the benefit of a public school system if that benefit can be achieved only through racially integrated schools required as a result of court decree during the session 1956-1957.

(9) The State of Virginia has still not had an adequate opportunity to reorganize its school laws in the light of the decisions of the Supreme Court. Until new laws are enacted, changes in the Prince Edward School system are impossible. The question still facing this Court as to the schools in Prince Edward County is not whether or not they are to be operated on a racially integrated basis. The only question that this Court can decide now, as in July, 1955, is whether the schools in Prince Edward County shall be operated on a racially segregated basis during the next session until the State of Virginia has had an opportunity to reorganize its school laws or whether the high schools shall be closed.

EXHIBIT F TO ANSWER TO MOTION FOR FURTHER RELIEF

(Filed June 29, 1956)

AFFIDAVIT OF VERNON C. WOMACK

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

Vernon C. Womack, being first duly sworn, deposes and says:

(1) I am the Commissioner of the Revenue of Prince Edward County, Virginia, and have served continuously in that position since my election to that office beginning January 1, 1940. Prior to that time I lived in the Town of Farmville for thirteen years. I was born in Prince Edward County and have lived there all my life.

(2) In my position as Commissioner of the Revenue I necessarily must talk to, deal with and come in contact with people of all classes in Prince Edward County, white and Negro. In fact it is my belief that I know personally considerably more than half the people in the County. The Negro people of Prince Edward County, consisting of about 50% of the population, pay only 14% of the real estate and personal property taxes payable to the County, whereas the 50% of white people pay 86% of these taxes. In addition, in the course of my official duties it is necessary for me to work closely with the Board of Supervisors of the County and I know the members of the Board personally and am well acquainted with their views on most matters.

(3) I have read the affidavit of Lester E. Andrews which is to be filed together with my affidavit. I am familiar with the feeling of the people of Prince Edward County and with

many of the events referred to in his affidavit, and, in my opinion, his affidavit is a fair statement of these matters. In addition I have read the affidavit of Sheriff James T. Clark which is to be filed together with my affidavit, and I am in full accord with his statement of facts and the feeling of the people of Prince Edward County.

(4) Tension between the races in Prince Edward County has grown materially, particularly during the last twelve months, to the point where it is stronger now than I have ever seen it in my lifetime. This tension has resulted in my opinion entirely from the actions that have been taken by the parties to this case and from the decisions of the Supreme Court of the United States.

(5) I am convinced that unless the public schools of Prince Edward County can be operated for the session 1956-57 in the same manner in which they have been operated in the past the schools will be closed. The people of Prince Edward County and the Board of Supervisors of the County, expressing the wishes of the people, have determined that County funds will not be appropriated to run racially integrated schools. This is the almost unanimous wish of the white residents of the County who pay 86% of County taxes. As a result unless the schools can be run on a racially segregated basis as they have been run in the past they will be closed. It does not seem to me that there is any substantial question at all that this result is true.

(6) The adverse effect of closing the schools on the children is apparent from the point of view of financing and education. In addition, I concur with Sheriff Clark in his opinion that closing the schools will result in a great increase in juvenile delinquency in the County, particularly among Negro youth for whom no private schools would be available.

SUPREME COURT. U. S.
No. 698
FILED
DEC 31 1957
JOHN T. FEY, Clerk

APPELLANTS APPENDIX

In the UNITED STATES COURT OF APPEALS for the Fourth Circuit

No. 7463

EVA ALLEN, IDA ALLEN and ULYSSES ALLEN, infants, etc., et al.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, et al.,
Appellees.

Appeal from the United States District Court For The Eastern District of Virginia, Richmond Division

OLIVER W. HILL,
SPOTTSWOOD W. ROBINSON, III,
THURGOOD MARSHALL,
Counsel for Appellants.

The Press of Lawyers Printing Co., Inc., Richmond 7, Va.

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Appeal from the United States District Court For The Eastern District of Virginia, Richmond Division

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APPELLANTS APPENDIX

MOTION FOR HEARING ON FORMULATION OF DECREE AND JUDGMENT

[R. p. 6]

Plaintiffs in the above entitled case respectfully move the Court to set this case for an early hearing for the

purpose of formulating and entering a decree in conformity with the decisions of the Supreme Court of the United States heretofore rendered in this action.

MANDATE

[R. pp. 2-5]

United States of America, ss

The President of the United States of America,

To the Honorable The Judges of the United States District Court For the Eastern District of Virginia

GREETING

Whereas, lately in the United States District Court for the Eastern District of Virginia, before you, or some of you, in a cause between Dorothy E. Davis, Bertha M. Davis, and Inez D. Davis, etc., et al., Plaintiffs, and County School Board of Prince Edward County, Virginia, et al., Defendants, Civil Action, No. 1333, wherein the judgment of the said District Court, entered in said cause on the 7th day of March, A. D. 1952, is in the following words, viz:

> "This cause came on to be heard upon the complaint, the answer of the original defendants, as well as the answer of the Commonwealth of Virginia, the intervening defendant, and upon the evidence, oral and documentary, adduced by all parties, and was argued by counsel.
>
> Upon consideration whereof, the Court, for the reasons set forth in its written opinion filed herein, hereby

1. (a) Denies the prayer of the complaint that the Court declare the provisions of section 140, Constitution of Virginia of 1902, as amended, and section 22-221, Code of Virginia of 1950, as amended, as invalid and in conflict with the statutes or Constitution of the United States; and

(b) Adjudges and Declares that the buildings, facilities, curricula and means of transportation furnished for the education of the Negro high school students in Prince Edward County, Virginia, are not substantially equal to [fol.1103] those provided for the white high school students in said county; and hereby

2. Adjudges, Orders and Decrees that the defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be, and they are hereby, forthwith and perpetually enjoined and restrained from continuing to provide, or maintaining, curricula and means of transportation for the white high school students in said county without providing and maintaining substantially equal curricula and means of transportation to the Negro high school students of said county; and it is further

3. Adjudged, Ordered and Decreed that the said defendants proceed with all reasonable diligence and dispatch to remove the unequality existing as aforesaid in said buildings and facilities, by building, furnishing and providing a high school building and facilities for Negro students, in accordance with the program mentioned in said opinion and in the testimony on behalf of the defendants herein, or otherwise; and it is also

4. Ordered that the plaintiffs recover their costs of the defendants.

Nothing further remaining to be done in this cause, it is stricken from the docket.

Armistead M. Dobie, United States Circuit Judge, Sterling Hutcheson, United States District Judge; Albert V. Bryan, United States District Judge."

as by the inspection of the transcript of the record of the said District Court, which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-four, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court, in this cause be, and the same is hereby, reversed with costs; and that the said plaintiffs, Dorothy E. Davis, et al., recover from the said defendants two thousand nine hundred seventy-five dollars and nineteen cents ($2,975.19) for their costs herein expended.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court to take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially

nondiscriminatory basis with all deliberate speed the parties to this case.

May 31, 1955.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinions and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United states, the twenty-seventh day of june, in the year of our Lord one thousand nine hundred and fifty-five.

HAROLD B. WILLEY,
Clerk of the Supreme Court of the United States

By Hugh W. Barr,
Deputy

INTERVENTERS' COMPLAINT IN INTERVENTION

[R. pp. 13-16]

[Caption Omitted]

CIVIL ACTION NO. 1333

DOROTHY E. DAVIS, BERTHA M. DAVIS and INEZ D. DAVIS, infants, by John Davis, their father and next friend, et al.,

Plaintiffs,

vs.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, et al.,

Defendants,

EVA ALLEN, IDA ALLEN and ULYSSES ALLEN, infants, by Hal Edward Allen, their father and next friend,

MARILYN L. DUPUY, IRENE DUPUY and EDWARD F. DUPUY, infants, by Charlie Dupuy, their father and next friend,

JOHN A. EARLEY, LAWRENCE A. EARLEY, and JOE L. EARLEY, infants, by Susie Earley, their mother and next friend,

MAXINE MORGAN and DELORES MORGAN, infants by Thomas Hall, their guardian and next friend,

SAMUEL S. HALL, LEON O. HALL and ROSETTA C. HALL, infants, by Harry S. Hall, their father and next friend,

CHARLES HICKS and ROY HICKS, infants, by C. W. Hicks, their father and next friend,

FRANKLIN R. HICKS and RUBY M. HICKS, infants by Sarah Elizabeth Hicks, their mother and next friend,

LORNELL SHEPPERSON, an infant, by P. H. Shepperson, her father and next friend,

HAROLD BAGLEY and MCDARNOLD BAGLEY, infants, by P. H. Shepperson, their guardian and next friend,
JAMES SCOTT, an infant, by Otis Scott, his father and next friend,
ROBERT THOMPSON, an infant, by W. Howard Thompson, his father and next friend,
EVA I. WILLIAMS and ALICE M. WILLIAMS, infants, by Frank Williams, their father and next friend,
Interveners.

INTERVENERS' COMPLAINT IN INTERVENTION

The above-named interveners, for their complaint in intervention, adopt all of the allegations of the complaint herein, and, in addition thereto, allege as follows:

1. Interveners are among those generally classified as Negroes, are citizens of the United States and of the Commonwealth of Virginia, and are residents of and domiciled in the County of Prince Edward, Virginia. They are within the statutory age limits of eligibility to attend the public secondary schools of said County and possess all qualifications and satisfy all requirements for admission thereto. They are children or wards, who had not completed the public elementary schools when this action was filed, of adults who are parties plaintiff in this action.

2. Defendants, and each of them, and their agents and employees, maintain and operate separate public secondary schools for Negro and white children, respectively, and deny

interveners and all other Negro children, because of their race or color, admission to and education in any public secondary school operated for white children, and compel interveners and all other Negro children, because of their race or color, to attend a public secondary school set apart and operated exclusively for Negro children, in the enforcement and execution of Article IX, Section 140, of the Constitution of the Commonwealth of Virginia, and Title 22, Chapter 12, Article 1, Section 22-221 of the Code of Virginia of 1950, and/or pursuant to a policy, practice, custom and usage of segregating, on the basis of race or color, all children attending the public secondary schools of said County.

3. The aforesaid action of defendants, and each of them, denies interveners, and each of them, their liberty without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, Section 1.

4. Notwithstanding that the discriminations aforesaid have been of long standing, and have been the subject of complaint to defendants and their predecessors in office upon numerous occasions in the past, and notwithstanding that plaintiffs, in their own behalf and in behalf of all other persons, citizens and residents of the County of Prince Edward, Virginia, similarly situated, have heretofore formally requested and demanded that defendants, and each of them, cease and desist therefrom, defendants, and each of them, refuse to act favorably upon said requests or demands, and will continue to refuse to admit them to, or enroll or educate any of them in, the public secondary schools maintained and operated in said County without regard to their race or color.

5. Defendants, and each of them, will continue to pursue

and to enforce and execute against interveners, and all other Negro children similarly situated residing in the County of Prince Edward, Virginia, the laws and/or the policies, practices, customs and usages specified in paragraph 2 hereof, and will continue to deny them admission, enrollment and education tc and in any public secondary school established, maintained and operated for children residing in said County who are not Negroes, unless restrained and enjoined by this Court from so doing.

6. Interveners, and those similarly situated and affected, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the policies, practices, customs and usages and the actions of defendants herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than this complaint for an injunction. Any other remedy to which interveners and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, and would cause further irreparable injury and occasion damage, vexation and inconvenience.

WHEREFORE, interveners respectfully pray that, upon the filing of this complaint, as may appear proper and convenient, this Court advance this action on the docket and order a speedy hearing of this action according to law, and that upon such hearing:

1. This Court grant to interveners all of the relief prayed for in the original complaint herein;

2. This Court allow interveners their costs herein, and grant such further, other, additional or alternative relief

as may appear to be equitable and just in the premises.

PETITION OF DEFENDANTS

[R. pp. 19-22]

The defendants in this cause, by counsel, respectfully show the Court:

(1) On August 30, 1954, following the decision of the Supreme Court of the United States on May 17, 1954, the Governor of Virginia appointed a Commission on Public Education to consider a course of future action in the light of the Supreme Court's decision. The Commission consists of 32 members of the General Assembly of Virginia. It has met from time to time on numerous occasions since its appointment and has announced that it is in the process of formulating a legislative program to be presented to the General Assembly of Virginia to govern the future operation of the public schools in the State of Virginia. The Commission has not yet announced the legislation it will propose, but is continuing with its work with as much expedition as the magnitude and complexity of the problems confronting it will permit. The facts as to the action of the Commission appear from the affidavit of Dowell J. Howard and from a copy of the Commission's interim report of June 10, 1955, which are attached hereto as Exhibit 1. The conclusion of the Commission is as follows:

> "In the circumstances it is the recommendation of this Commission that Your Excellency and the State Board of Education declare that it is the policy of

the State to continue schools throughou the school year 1955-1956 as presently operated. Further, it is the judgment of this Commission that an adjustment, at this time, to a school system not based on race would not be practicable or feasible from an adminstrative standpoint or otherwise.

"Your Commission will continue its work and submit a further report at its conclusion. The report will contain specific bills for enactment by the General Assembly. For the foregoing reasons, it is the view of the Commission that an extra session of the General Assembly should not be called at this time."

(2) Thereafter, on June 23, 1955, the Governor of Virginia and the State Board of Education met together to consider the problems raised by the decision of the Supreme Court in this case of May 31, 1955. After the meeting a joint statement was issued which is appended to Exhibit 1 to the effect that the State Board of Education and local political subdivisions cannot initiate a plan consistent with the ruling of the Supreme Court until the General Assembly has enacted appropriate legislation to be recommended by the Commission on Public Education. Accordingly, the Governor and the State Board of Education adopted as a State policy that the local school authorities to the extent possible should open and operate the public schools throughout the session 1955-1956 on the same basis as they have heretofore been operated.

(3) The determination by the State Board of Education that immediate integration of the races in the public schools during the session 1955-1956 is impossible is amply supported by the facts. The Supreme Court of the United

States has recognized that problems relating to administration, physical condition of school plants, the transportation of pupils, personnel, revision of school districts and attendance areas will require time for adjustment. Even if no further legislation were required and if immediate integration were possible in Virginia, the necessary adjustments could not be accomplished in time for the operation of integrated schools during the session 1955-1956. But there is also the necessity for revision of State statutes, and the General Assembly of Virginia cannot act with the speed of a private individual. Accordingly, it is factually impossible to operate racially integrated schools during the session 1955-1956, and the only way in which schools can be operated during that session is on the basis on which they have heretofore been operated.

In regard to the facts alleged in the preceding paragraphs, attention is invited to Exhibit 1 filed herewith.

(4) The difficulties faced by the State of Virginia as a whole are met with particular intensity in Prince Edward County. The facts as to the operation of schools in Prince Edward County during the session 1955-1956 and as to the events that have occurred there since this case was last before this Court are detailed in the affidavit of Thomas J. McIlwaine, attached hereto as Exhibit 2, and the affidavit of B. Calvin Bass, attached hereto as Exhibit 3. A review of those affidavits will make it clear to the Court that the schools of Prince Edward County cannot be operated on an integrated basis during the session 1955-1956.

(5) The State of Virginia is proceeding with all deliberate speed to accommodate the administration of its public school system to the new conditions resulting from the decision of the Supreme Court in this case. The method

of operation of the schools in Prince Edward County cannot be changed until appropriate action has been taken on the State level to accomplish necessary legislative changes and to establish a new pattern for public school operation. If the Court should direct that the high schools in Prince Edward County be operated during the session 1955-1956 otherwise than in the manner in which they have heretofore been operated, the school authorities of Prince Edward County will have no alternative other than to close the schools in the County during the session 1955-1956 to the lasting detriment of the school children of both races.

Accordingly, the defendants petition the Court that it enter an order that

i will permit the operation of the high schools in Prince Edward County, Virginia, during the session 1955-1956 as heretofore operated pending the further order of this Court; and

ii will require the defendants to report to this Court not later than August 1, 1956, the steps that they have taken to adjust to the decision of the Supreme Court of the United States in this case; and

iii will continue this case on the docket of the Court pending the filing of such report.

The defendants are prepared to present testimony in support of the allegations of fact contained in this petition.

[Exhibits Omitted]

ORDER ON MANDATE
[R. pp. 44-46]

This cause came on to be heard upon the papers and orders heretofore filed, upon the mandate of the Supreme Court of the United States received on June 28, 1955, upon the motions of the plaintiffs for the formulation and entry of a decree on the said mandate, and upon the petition of the defendants, as well as the drafts of the decrees proposed by each side, and was argued by counsel.

Upon consideration whereof the Court is of the opinion that the said mandate requires it to, and accordingly it does hereby,

ADJUDGE, ORDER, DECLARE and DECREE:

1. That the decree entered by this Court on the 7th day of March, 1952, be, and it is hereby, vacated and set aside to the extent that it denies the prayer of the complaint herein for a declaration that section 140, Constitution of Virginia of 1902, as amended, and section 22-221, Code of Virginia of 1950, as amended, insofar as they direct that white and colored persons shall not be taught in the same school, are unenforceable because invalid as in conflict with the statutes or Constitution of the United States;

2. That insofar as they direct that white and colored persons, solely on account of their race or color, shall not be taught in the same schools, neither said section 140, Constitution of Virginia of 1902, as amended, nor said section 22-221, Code of Virginia of 1950, as amended, shall be enforced by the defendants, because the provisions of said sections are in violation of the clauses of the Fourteenth Amendment to the Constitution of the United States

forbidding any State to deny to any person within its jurisdiction the equal protection of the laws;

3. That the defendants be, and they are hereby, restrained and enjoined from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school, from and after such time as the defendants may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause; but the Court finds that it would not be practicable, because of the adjustment and rearrangement required for the purpose, to place the Public School System of Prince Edward County, Virginia, upon a nondiscriminatory basis before the commencement of the regular school term in September 1955, as requested by the plaintiffs, and the Court is of the opinion that the refusal of the Court to require such adjustment and rearrangement to be made in time for the said September 1955 school term is not inconsistent with the public interest or with the decision of the Supreme Court;

4. That jurisdiction of this cause be retained for further consideration and action from time to time, if the necessity shall occur, in respect to any issue pertinent to, or arising from, the said injunction.

MOTION FOR FURTHER RELIEF
[R. pp. 47-53]

Plaintiffs move the Court to grant them further neces-

sary and proper relief and, in support thereof, state:

1. On May 17, 1954, the Supreme Court of the United States rendered an opinion in this action and its companion cases wherein it declared

> "... that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

2. On May 31, 1955, the Supreme Court of the United States rendered another opinion in this action and its companion cases wherein it declared that

> "All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle ...
>
> "... the viatlity of these constitutional principles cannot be allowed to yield simply because of disagreement with them.
>
> "While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the

public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

"The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the district courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases."

3. On July 18, 1955, this Court entered a decree in this action which, among other things, adjudged, ordered, declared and decreed

"2. That insofar as they direct that white and colored persons, solely on account of their race or color, shall not be taught in the same schools, neither said section 140, Constitution of Virginia of 1902, as amended, nor said section 22-221, Code of Virginia of 1950, as amended, shall be enforced by the defend-

ants, because the provisions of said section are in violation of the clauses of the Fourteenth Amendment to the Constitution of the United States forbidding any State to deny to any person within its jurisdiction the equal protection of the laws;

"3. That the defendants be, and they are hereby, restrained and enjoined from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school, from and after such time as the defendants may have made the necessary arrangements for admission of children to such school on a non-discriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause; but the Court finds that it would not be practicable, because of the adjustment and rearrangement required for the purpose, to place the Public School System of Prince Edward County, Virginia, upon a nondiscriminatory basis before the commencement of the regular school term in September 1955, as requested by the plaintiffs, and the Court is of the opinion that the refusal of the Court to require such adjustment and rearrangement to be made in time for the said September 1955 school term is not inconsistent with the public interest or with the decision of the Supreme Court;

"4. That jurisdiction of this cause be retained for further consideration and action from time to time, if the necessity shall occur, in respect to any issue pertinent to, or arising from the said injunction."

4. Plaintiffs are informed and believe, and therefore allege on information and belief, that neither defendant County School Board of Prince Edward County, Virginia,

nor defendant T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, Virginia, has made a reasonable start toward compliance with the decisions of the Supreme Court of the United States or the injunction of this Court, nor has either made or started making any arrangements for the admission of plaintiffs to the public secondary schools of Prince Edward County, Virginia, on a racially nondiscriminatory basis.

5. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendants County School Board of Prince Edward County, Virginia, and T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, Virginia, are awaiting formulation by defendant Commonwealth of Virginia of policy and plans to be pursued in the public schools of Virginia with reference to the aforesaid decisions and do not propose to take any action to effectuate a transition to a racially nondiscriminatory school system unless and until defendant Commonwealth of Virginia formulates policy and plans therefor.

6. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendant Commonwealth of Virginia has not made or started making any arrangements for the admission of plaintiffs to the public secondary schools of Prince Edward County, Virginia, on a racially nondiscriminatory basis, and that it has not taken any substantial action toward formulation of policy and plans to be pursued in the public schools of Virginia with reference to the decisions aforesaid except as follows:

(a) On or about November 11, 1955, the Virginia Commission on Public Education, a 32-member all-white legislative commission appointed by the Governor of Virginia

to examine the effect of the aforesaid decisions and to make such recommendations as it deemed proper, submitted to the Governor of Virginia its report, a copy of which is attached hereto as Exhibit A. In this report the Commission was highly critical of the decision of May 17, 1954, of the Supreme Court of the United States in this action and its companion cases and stated:

> "This Commission believes that separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power."

Among other things, the Commission recommended that a special session of the General Assembly of Virginia be called for the purpose of initiating a constitutional convention to amend Section 141 of the Constitution of Virginia to permit the appropriation of public funds for expenditure in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the state or some political subdivision thereof, and that, upon such amendment being adopted, legislation be enacted conferring a broad discretion on local school authorities to make pupil assignments, and permitting tuition grants from public funds to parents and guardians who might object to having their children attend nonsegregated schools.

(b) On December 3, 1955, the General Assembly of Virginia, in special session, enacted a bill, a copy of which is attached hereto as Exhibit B, submitting to the qualified electors of Virginia the question whether there should be

a convention to revise and amend Section 141 of the Constitution of Virginia.

(c) On January 9, 1956, the electors of Virginia voted to have a convention to revise and amend Section 141 of the Constitution of Virginia.

(d) On January 19, 1956, the General Assembly of Virginia, in regular session, enacted a bill, a copy of which is attached hereto as Exhibit C, providing for the election of delegates to such constitutional convention, the issuance of a writ for the same, the convening of such delegates, the organization and functioning of such convention, and appropriating funds to defray the expenses of the same.

(e) On February 1, 1956, the General Assembly of Virginia, in regular session, adopted a resolution, a copy of which is attached hereto as Exhibit D, characterizing said decision of May 17, 1954, "a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States," and asserting that a "question of contested power" exists between the aforesaid decision and the resolution, and appealing to other states of the United States to join Virginia "in taking appropriate steps, pursuant to Article V of the Constitution, by which an amendment, designed to settle the issue of contested power hereby asserted, may be proposed to all the States," and declaring "that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers. . . ."

(f) On March 7, 1956, in the aforesaid constitutional convention ordained a revision and amendment of Section 141 of the Constitution of Virginia permitting the appropriation of public funds for expenditure in furtherance of elementary, secondary, collegiate and graduate education of Virginia students public and nonsectarian private schools and institutions of learning in addition to those owned or exclusively controlled by the State or some political subdivision thereof, a copy of which ordinance is attached hereto as Exhibit E.

(g) On March 10, 1956, the General Assembly of Virginia, in regular session, adopted a resolution, a copy of which is attached hereto as Exhibit F, declaring that "it is the public policy of Virginia that no athletic team of any public free school should engage in any athletic contest of any nature within the State of Virginia with another team on which persons of the white and colored race are members, nor should any such school schedule or permit any member of its student body to engage in any athletic contest within the State of Virginia with a person of the white and colored race while such student is a member of such student body."

7. By their failure to effectuate a transition to a racially nondiscriminatory school system, defendants continue, and will continue, to deny plaintiffs, and other Negro children of public school age similarly situated, the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.

8. Plaintiffs are informed and believe, and therefore allege on information and belief, that no additional time is necessary to carry out the rulings aforesaid in an effective

manner, or is necessary in the public interest, or is consistent with good faith compliance at the earliest practicable date.

9. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendants continue to operate the public schools of Prince Edward County, Virginia, on the same racially separate basis that obtained prior to the aforesaid decisions and will indefinitely continue to do so unless specifically ordered (a) to make an immediate start toward desegregation and (b) to complete this desegregation within a prescribed period of time.

Wherefore, plaintiffs respectfully pray that upon the filing of this motion, as may appear proper and convenient to the Court, this motion be advanced on the docket and a speedy hearing hereof be ordered according to law, and that upon such hearing

(a) This Court enter a decree ordering and directing defendants, and each of them, their successors in office, and their agents and employees, to make a prompt and reasonable start toward compliance with the ruling of the Supreme Court of the United States of May 17, 1954, and permanently restraining and enjoining defendants, and each of them, their successors in office, and their agents and employees, from using race as a basis of determining admission, assignment or attendance in any public secondary school in Prince Edward County, Virginia, so that at a time no later than the school term commencing in September, 1956, plaintiffs, and all other Negro children of public school age similarly situated, will be attending schools on a basis not involving race, and ordering defendants, and each of them, and their successors in office, to file with this Court interim reports showing the plans and steps they

are making to change the existing method of determining the public schools pupils attend so that as of September, 1956, race will no longer be used as a criterion for public school attendance.

(b) That this Court allow plaintiffs their costs herein.

(c) That this Court retain jurisdiction of this cause for further consideration and action from time to time, if the necessity shall occur, in respect to any issue pertinent to, or arising from, any injunction issued against defendants.

[Exhibits Omitted]

ANSWER TO MOTION FOR FURTHER RELIEF

[R. pp. 73-77]

The Defendants, in answer to the Motion for Further Relief filed by the Plaintiffs herein, say:

1. The Defendants, County School Board of Prince Edward County and T. J. McIlwaine, admit that they are awaiting the formulation by the Commonwealth of Virginia of plans and policies to be followed in rearranging its school laws in the light of the decisions of the Supreme Court of the United States and assert that they are required to do so under valid laws of the Commonwealth.

2. The Defendants assert that the Commonwealth has made great strides toward the rearrangement of its school laws. The details of the steps taken are outlined below:

(a) Promptly after the decision of this Court on July 18, 1955, it became apparent to the Governor that certain

provisions of Section 141 of the Constitution of Virgin
might inhibit certain legislation deemed desirable in co
nection with the solution of these problems. Accordingl
a judicial interpretation of this section was required. Acti
was promptly instituted in the Supreme Court of Appea
of Virginia. On November 7, 1955, that Court decide
that the State could not pay money to private education
institutions for tuition purposes. *Almond* v. *Day*, 197 V
449.

(b) Promptly after this decision, the Commission
Public Education on November 11, 1955, presented its r
port to the Governor. A copy of this report is filed herewi
as Exhibit A. This report recommended that an amendme
of Section 141 of the Constitution of Virginia be propose

(c) On November 14, 1955, the Governor of Virgin
summoned the General Assembly of Virginia to meet
special session on November 30, 1955, to consider the re
ommendation of the Commission on Public Education.

(d) On November 30, 1955, the General Assembly m
in special session. It adopted an act, approved by t
Governor on December 3, 1955, authorizing an election
determine whether a constitutional convention should
called to consider the amendment of Section 141 of t
Constitution of Virginia.

(e) On January 9, 1956, the question so propound
was presented to the voters. The State Board of Electio
certified to the Governor on January 16, 1956, that t
electorate had voted in favor of such constitutional co
vention by a vote of 304,154 in favor and 146,164 again

(f) The General Assembly of Virginia met in regul

session on January 11, 1956. In obedience to the mandate of the electorate, a bill was promptly introduced to provide for the election of delegates to a constitutional convention and its meeting. This bill was enacted by the General Assembly and approved by the Governor on January 19, 1956.

(g) Delegates to the Constitutional Convention were elected by the people in their respective districts on February 21, 1956. This election was promptly canvassed.

(h) The Constitutional Convention met on March 5, 1956. After deliberation, it promulgated Section 141 of the Constitution in amended form on March 7, 1956.

(i) The General Assembly adjourned at the conclusion of its regular session of 60 days duration on March 10, 1956, 3 days after the promulgation of the Constitutional amendment.

(j) Section 22-122 requires the Division Superintendent of Schools, with the advice of the School Board, to present to the Board of Supervisors a budget for the ensuing school session on or before April 1 of each year. This budget is a part of the general County budget which must be acted on during the month of May. It is apparent, therefore, that no action taken by the General Assembly after the adjournment of the Constitutional Convention could have been effective for the session 1956-57.

(k) The Governor of Virginia has stated publicly that he proposes to call the General Assembly in special session within 90 days after June 6, 1956, to consider and take action on these problems. The statutes enacted at this session will be effective for the session 1957-58.

3. Accordingly, the Defendants assert that the Commonwealth has taken every reasonable step to proceed as rapidly as possible toward a reasonable solution of the problems raised by the decisions in this case.

4. The Defendants assert that any requirement by this Court that the high schools be no longer operated for the session 1956-57 on the basis on which they have been operated in the past would result in the closing of such schools, increased racial tension and possible violence, to the lasting detriment of the citizens of Prince Edward County, whether they be children or adults, white or Negro. In support of this allegation, the Defendants present the affidavits of the persons listed below filed herewith as exhibits lettered as indicated opposite their names below:

Name of Affiant	*Exhibit Letter*
Lester E. Andrews	A
B. Calvin Bass	B
James T. Clark	C
Carter O. Lowance	D
Thomas J. McIlwaine	E
Vernon C. Womack	F

THE DEFENDANTS, therefore, request that the Motion for Further Relief filed by the Plaintiffs be denied.

[Exhibits Omitted]

SUPPLEMENTAL ANSWER AND MOTION TO DISMISS MOTION FOR FURTHER RELIEF

[R. pp. 100-101]

The Defendants respectfully move the Court to dismiss the Motion for Further Relief filed by the Plaintiffs herein on the following grounds:

1. On September 29, 1956, the Governor of Virginia approved Chapter 70 of the Acts of Assembly of Virginia for the Extra Session of 1956. This act, to become effective on December 28, 1956, provides a comprehensive program for the assignment of students to various schools, including provisions for administrative appeals with judicial review. A copy of this act appears on page 47 of the pamphlet attached hereto as Exhibit A, the pamphlet containing all of the statutes relating to the public schools enacted at such Extra Session. This act will be in effect before the opening of the next term of the public schools of Prince Edward County. The act provides effective administrative procedures for the plaintiffs by which they can obtain the relief that they seek in this case to the extent that they are entitled to relief. The plaintiffs should not be permitted to seek relief now in this court until all administrative remedies provided by the act have been exhausted.

2. The order entered herein on July 18, 1955, was a final order and adequate remedies are available to the plaintiffs for the enforcement of that order. Accordingly, further relief in the form of an amendment of or supplement to that order should not be awarded to the plaintiffs.

[Exhibit Omitted]

OPINION

[R. pp. 104-136]

This case originated in the Richmond Division upon the filing of a complaint on May 21, 1951. The declared object of the complaint was, in substance, to obtain a declaratory judgment holding that segregation of pupils in the public schools in the county by races constituted discrimination in violation of the Fourteenth Amendment to the Constitution of the United States. There were also allegations concerning the inequality of school facilities, which last constituted a somewhat unimportant part of the controversy.

The case was heard February 25-29, 1952, by a three-judge court, which had been convened in accordance with the provisions of the statute. The opinion of that Court was filed on March 7, 1952, and is reported in *103 Fed. Supp. 337*. An appeal was allowed on May 5, 1952, and on May 17, 1954, the Supreme Court handed down its opinion, reversing the findings and conclusions of this Court, the case having been consolidated with four other cases then pending before it. See *Brown* v. *Board of Education, 347 U.S., 483*. At the suggestion of the Court the case was further argued as to specific questions hereafter more fully discussed, and the Court filed its second opinion on May 31, 1955. *349 U.S., 294*. The mandate having been received by this Court on June 28, 1955, the case was called for further proceedings and on July 18, 1955, the three-judge court entered an order directing compliance with the terms of the mandate, but finding that it was not practicable to effect a change in the operation of the public schools of the county during the session beginning September 1955.

On April 23, 1956, plaintiffs filed a motion seeking an order fixing a time limit within which compliance with the order should be had, to which answer of the defendants was filed on June 29, 1956. On July 9, 1956, the three-judge court was reconvened and, pursuant to order previously entered, heard argument on the sole question of whether it should continue to function or if the case should be returned to the resident District Judge in whose division suit was instituted. On July 19, 1956, the Court announced its unanimous decision that since the constitutional question involved had been determined, the three-judge court should no longer function and the matter should be heard by the resident District Judge. On October 17, 1956, defendants filed a motion seeking the dismissal of the case upon the ground that the General Assembly of Virginia in extra session 1956 had provided the plaintiffs an adequate remedy at law in the courts of the Commonwealth.

The respective motions were argued on November 14, 1956, and the case is now before me as the resident District Judge for disposition of the motions upon the pleadings and certain exhibits which have been filed pertaining to the motions.

I am mindful that other District Courts have dealt with similar cases but in each case the Court was dealing with the record before it and with the problems of the particular locality affected by its order. Consequently, those decisions afford little, if any, aid in dealing with this case.

The questions raised by the supplemental answer and motion to dismiss the motion for further relief filed by the defendants on October 17, 1956, and the arguments there-

on, may be stated as follows:

(a) Should the three-judge District Court be reconvened?

(b) Are certain statutes passed by the General Assembly of Virginia in extra session 1956 constitutional?; and

(c) Should plaintiffs be required to exhaust administrative remedies provided by the state statutes?

I shall first consider the questions presented in the last mentioned motion in the order stated.

From an examination of the applicable statute *(Title 28, Section 2281, United States Code)*, and upon consideration of its purpose I reach the conclusion that in the present state of the record in this case it is not appropriate to request the convening of a three-judge court. There is no application before me for an order to restrain or enjoin the action of any officer of the state in the enforcement or execution of any state statute or order such as contemplated by the Act of Congress.

In the present state of the record of this particular case I do not consider the constitutionality of the state statutes referred to or the relief there provided proper subjects of inquiry. They were the subject of argument at the hearing on November 14, 1956, and I shall dispose of the questions so raised without extended discussion.

The situation before me was aptly summed up by Judge Parker in *Carson v. Warlick*, decided November 14, 1956, in which he used the following language:

"It is argued that the Pupil Enrollment Act is unconstitutional; but we can not hold that that statute is unconstitutional upon its face and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked."

And further:

"It is to be presumed that these (the officials of the schools and the school boards) will obey the law, observe the standard prescribed by the legislature, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration. As said by the Supreme Court in *Brown, et al v. Board of Education, et al*, 349 U.S., 294, 299:

" School authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. "

The opinion in *The School Board of the City of Charlottesville, et al v. Doris Marie Allen, et al, and County School Board of Arlington County, Virginia, et al v. Clarissa S. Thompson, et al (4th Cir.) decided December 31, 1956*, contains language pertinent here. The Court again speaking through Chief Judge Parker, in referring to administrative remedies provided under Section 22-27 of the Code of Virginia, and after pointing out that the pupil placement law recently enacted by the General Assembly of Virginia had not become effective when the cases were heard (although

it was effective at the time that opinion was rendered, as is the situation here) said:

> "* * *. Reliance is placed upon our decision in *Carson* v. *Warlick*, 4 Cir. F. 2d. . In that case, however, an adequate administrative remedy had been prescribed by statute, the plaintiffs there had failed to pursue the remedy as outlined in the decision of the Supreme Court of the State and *there was nothing upon which a court could say that if they had followed such remedy their rights under the Constitution would have been denied them.*" (Emphasis supplied)

See also *Hood* v. *Board of Trustees, etc., 232 Fed. (2d), 626 (4th Cir.)*, and *Robinson* v. *Board of Education, etc., 143 Fed. Supp., 481 (District of Maryland)*.

The quoted language appears in point in so far as the constitutional question is concerned. While the statutes involved are not identical, the principle announced is applicable.

Turning to the proposal that the plaintiffs be required to exhaust the administrative remedies provided by the state statutes. I am again confronted by the record before me. Being of opinion I am not in a position to pass upon the constitutionality of the statutes setting up the administrative remedy, it is my thought that I should not undertake to require the plaintiffs to seek any particular remedy. They are free to do so and thereby test the constitutionality of the statutes should they desire. However, that is a right, not an obligation. In the meantime, this is a matter of school administration in which I should not interfere.

It follows that the motion of the defendants to dismiss the motion for further relief should not be granted at this time. However, I incline to the view that instead of being dismissed it should be retained on the docket of the Court for final disposition at a later time should further proceedings develop an issue properly determinable in this case.

In undertaking to approach a solution to the troublesome problems involved in this case which are presented by the record and properly before me for determination, including the motion for further relief filed by the plaintiffs, it is to be borne in mind that the Supreme Court has decided only one legal principle which is concisely stated in the syllabus appearing in *347 U.S., 483*, as follows:

> "Segregation of white and Negro children in the public schools of a state solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to negro children the equal protection of the laws guaranteed by the Fourteenth Amendment * * *."

A study of the opinions of May 17, 1954, and May 31, 1955, reveals no other principle of law to serve as precedent or landmark in undertaking to apply the law to the facts, although certain well-recognized equitable principles are mentioned. For a clearer understanding of the question here presented, some discussion of those opinions at this point may be helpful.

In the 1954 opinion, which will be referred to as the First Brown Case, at page 495, the Court, after stating that "because of the wide applicability of this decision, and because of the great variety of local conditions, the formu-

lation of decrees in these cases presents problems of considerable complexity", requested counsel to present further argument on questions which may be briefly summarized as follows: Whether a decree would necessarily follow providing that negro children should forthwith be admitted to schools of their choice, or whether the Court should permit an effective gradual adjustment to be brought about to a system not based on color distinctions; whether the Supreme Court should formulate detailed decrees in the cases; if so, what specific issues should be reached thereby; if the appointment of a special master to hear evidence with a view of recommending specific terms for the decrees would be desirable; and finally, whether that Court should remand the cases to the courts of first instance with directions to frame decrees, and if that policy were followed, what general directions should the decrees of the Supreme Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees. For full text of the questions propounded and argued see *345 U.S., 972*.

Following elaborate argument upon these questions, in which the Attorneys General of the affected states and the Solicitor General of the United States presented their views, the Court filed its opinion on May 31, 1955, which will be referred to as the Second Brown Case. With knowledge of what was considered by the Court, as revealed by the questions, the language of the opinion in the Second Brown Case takes on added significance, both with respect to what was not said as well as to what was said. Certain portions of that opinion follow:

"Full implementation of these constitutional principles may require solution of varied local school

problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts."

The Court then proceeded to announce the following principles which should receive attention of the District Courts:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional

> principles cannot be allowed to yield simply because of disagreement with them."

From the foregoing it is clear that the law must be enforced but the Court is acutely conscious of the variety of problems of a local nature constituting factors to be considered in the enforcement. Further emphasis upon this point is found on *page* 298, where the Court said:

> "Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief."

Bearing in mind that the only legal issue in this case pertains to a right guaranteed by the Constitution, this language coupled with the action of the Court, takes on significance which can hardly be over emphasized. It is elementary law that one deprived of a right guaranteed by the Constitution ordinarily is afforded immediate relief. Notwithstanding this fundamental principle, the Supreme Court in this case has seen fit to specifically declare that, while the plaintiffs are entitled to the exercise of a constitutional right, in view of the grave and perplexing problems involved, the exercise of that right must be deferred. With that declaration the Court used equally forceful language indicating that it realizes that conditions vary in different localities. Consequently, instead of simply declaring the right and entering a mandate accordingly, it has seen fit in the exercise of its equity powers to not only defer until a later date the time when the right may be exercised, but to clearly indicate that the time of exercising such right may vary with conditions. A realization of the

effect of this action on the part of the Court is of supreme importance to an understanding of the course to be pursued by the Courts of first instance. At the risk of being repetitious, I again recall that: Before laying down those principles, the Court considered and rejected the suggestion that negro children should be forthwith admitted to schools of their choice; rejected the suggestion that it formulate detailed decrees; rejected the suggestion that a special master be appointed by it to hear evidence with a view to recommending specific terms for such decrees and adopted the proposal that the Court in the exercise of equity powers direct an effective gradual adjustment under the order of the Courts of first instance. Further, the Court considered and rejected the suggestion that a specified rule of procedure be established for the District Courts but placed upon those Courts the responsibility of considering, weighing and being guided by conditions found to prevail in each of the several communities to be affected by their decrees.

In the absence of precedent, in undertaking to follow the mandate of the Supreme Court, the District Courts are confronted with the necessity of following an uncharted course in applying the sole legal principle announced in the First Brown Case. One idea which emerges clearly is that procedural rules adopted in one locality may be altogether inapplicable to conditions in another.

Boiled down to its essence, in the Second Brown Case the Court after pointing out that the local school authorities have the primary responsibility of finding a solution to the varied local problems, proceeded to observe that the District Courts are to consider whether the actions of the local authorities are in good faith; and that by reason of

their proximity to local conditions those Courts can best appraise the conduct of the local authorities. It is then pointed out that in so appraising, the Courts should be guided by the traditionally flexible principles of equity for adjusting and reconciling public and private needs. To be considered is the personal interest of the plaintiffs, as well as the public interest in the elimination of obstacles in a systematic and effective manner. During this period the Courts should retain jurisdiction of the cases. The Court has here clearly and in unmistakable terms placed upon the District Judges the responsibility of weighing the various factors which prevail in the respective localities affected. There is here a recognition of the obvious fact that in one locality in which conditions permit, a change may be effected almost immediately. In other localities a specified period appropriate in each case may be feasible and a definite time limit fixed accordingly. In yet other communities a greater time for compliance may be found necessary. It is clear that the Court anticipated the application of a test of expediency in such cases so that an orderly change may be accomplished without causing a sudden disruption of the way of life of the multitude of people affected.

While the Supreme Court made no reference to yet another interest, there is one of a semi-public nature. This involves the teachers of the county, both white and colored, and their families, dependent upon them for support.

The conflicting rights and interests of racial and national groups in this country is nothing new. It is not confined to the negro race but numerous illustrations might be used. A striking illustration is found in the situation of persons of Oriental origin who have come to this country. It is

worthy of passing note to recall that the opinion appearing in the official reports immediately preceding the First Brown Case involves the rights of persons of Mexican descent. *Hernandez* v. *Texas*, 347 U.S., 475. It must be borne in mind that these conflicts and the cases arising therefrom are the result of customs, traditions, manners and emotions which have existed for generations. In this particular case the customs to be changed have been not only generally accepted but repeatedly and expressly declared the law of the land since 1896.[1] While lawyers may have been conscious of the evolution of the law during this period and prepared to anticipate the possibility of a change, the average layman affected may not be charged with such prescience. Patience, time and a sympathetic approach are imperative to accomplish a change of conditions in an orderly and peaceful manner and with a minimum of friction.

In seeking a solution it is necessary to know and to understand the background upon which the factual situation is cast. In this connection it is necessary to examine briefly the present conditions in Prince Edward County, Virginia, historically and as revealed by the record in this case.[2]

Prince Edward County being inland from the easily navigable tidal reaches of the streams watering that region, was not settled until the first half of the 18th century, after the power of the Indians had been broken. At that time the pattern of life in the Colony had become established and the early residents carried with them the manners and

[1] *Plessy* v. *Ferguson*, 163 U.S., 537; *Gong Lum* v. *Rice*, 275 U.S., 78.

[2] See "History of Prince Edward County, Virginia"—Herbert Clarence Bradshaw—1955

customs prevailing in the more populous regions of Virginia. By 1783 the population consisted of 1,552 white and 1,468 colored residents. The 1950 census showed a population of 15,396, with the white and colored races approximately equal in number. During the intervening years the relations between the races have been harmonious, with a minimum of friction and tension as compared with some regions. During several decades prior to the War Between the States the processes of orderly and gradual adjustment which were becoming increasingly evident were interrupted by being involved in the political issues confronting the growing nation, with particular reference to regional differences and the clash of economic rivalries of various sections. Unfortunately this resulted in accentuating racial tension and hostility which became somewhat acute at times. While these conditions were common to the southeastern and southern parts of the country, it was felt less in Prince Edward and the surrounding area than in many other sections.

In the days following 1861-65 the entire section was poverty stricken. For the rank and file of both races there was a struggle for existence and education was of secondary importance. It is true that in this situation with the local government controlled by members of the white race and with severely limited means, there was inequality in the division, but members of the negro race were not excluded from sharing, although to a lesser extent. This was due in part to an understandable, if erroneous, feeling that those upon whom the greater tax burden fell should receive the greater benefit. During the second quarter of the present century the economy of the section most seriously concerned has shown a marked improvement. Due to that improve-

ment, corresponding advantages have resulted in housing, education and knowledge on the part of both races. Marked improvement in racial relationship resulted although many firmly fixed ancient customs and manners remain. With an improvement in the economic condition of the county and the resulting increase in available financial resources, an awareness of public sentiment, the mandatory requirements of the Virginia constitution and statutes upon the subject, coupled with suits brought in Federal Courts in other localities, the responsible authorities of Prince Edward County made plans for the erection of new school buildings exclusively for negroes, which are now concededly equal if not superior to those occupied by the white pupils.

Before these plans could be completed, this suit was filed. Since the decision in the Brown case these plans have been completed. The defendants, who are the Superintendent and members of the School Board, and as such charged with the "primary responsibility for elucidating, assessing and solving" their problems, have proceeded with the operation of the schools in the county in accordance with the practice which has prevailed. They have prepared and submitted to the Board of Supervisors of the county annual budgets for the operation of the schools. In this connection it is to be borne in mind that the defendants have no authority under the law to levy or assess taxes nor to raise funds except in a limited manner by borrowing under certain conditions not pertinent here. Responsibility for providing local funds for the operation of schools rests upon the Board of Supervisors who are not defendants before this Court. The School Board consists of members appointed by the school trustee electoral board, the members of which in turn are appointed by the local state court. The members of the

Board of Supervisors are elected by the people. Buttressed by popular demand of the people of the county since the decision in the First Brown Case, evidence in part by a petition signed by more than 4,000 residents, the Board of Supervisors has declined to allocate funds for the operation of schools on an annual basis. Instead it appropriates the necessary operating expenses on a monthly basis, with a publically declared intention of discontinuing such appropriation if schools in the county are mixed racially at this time. In this connection attention is invited to the statutes recently enacted by the Virginia General Assembly under which the funds provided by the state may be withheld. Pending final interpretation of those statutes time valuable in the educational opportunities of the children involved might be irretrievably lost. Affidavits filed in this case and in no way controverted or mentioned by counsel for the plaintiffs, declare racial relations in the county to be more strained than at any time during the present generation.

In this state of facts I am called upon to fix a time when the defendants should be required to comply with the terms of the injunction issued by the three-judge court in obedience to the mandate of the Supreme Court. To do this I am to "adjust and reconcile public and private needs", by weighing and considering the personal interests of the plaintiffs as well as the interest of the public, in the elimination of obstacles in order that there may be a systematic, orderly and effective transition of the school system in accordance with the constitutional principles announced in the Brown case.

I believe the problems to be capable of solution but they will require patience, time and a sympathetic understanding.

They can not be solved by zealous advocates, by an emotional approach, nor by those with selfish interests to advance. The law has been announced by the Supreme Court and must be observed but the solution must be discovered by those affected under the guidance of sensible leadership. These facts should be self evident to all responsible people.

The children of both races, constituting an entire generation of this county, are the persons to be affected by whatever action may be taken and it follows that theirs is the real interest at stake, although closely connected with that of their parents and guardians.

Should the public schools of the county be closed for any reason, approximately three thousand children, including those of an age at which they are peculiarly impressionable, will be released from attendance. An interrupted education of one year or even six months at that age places a serious handicap upon the child which the average one may not overcome. Among those of the older group there are some for whom it will mean the end of an education. Should the schools be resumed after an interruption, those among the younger group will be retarded in acquiring an education as compared with their contemporaries in other communities. With the release from discipline brought about by compulsory attendance at school, problems concerning juvenile conduct will be intensified with resulting injury to both children and the community and a resulting increase of racial tension with members of each race blaming the other for the lack of schools. In this connection it is to be remembered that the police protection of rural communities is different from that afforded in more populous areas. The salaries paid teachers in the state are not such

as to enable them to accumulate a fund sufficient to support themselves and their families over a protracted period of unemployment. Loss of employment would be a serious consequence to many teachers of both races who are established in the community. Tentative and substantial plans have been made for continuation by private means of the education of white children of the county. There is no such provision for negro children. These considerations all involve the public and private interests of the community as distinguished from the quandary of the members of the School Board.

The admonition of the Supreme Court that the personal interests of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis is a consideration of which I am mindful. In response to a question from the bench, counsel for the plaintiffs stated that so far as he knew none of the original plaintiffs are now attending the schools. However, additional named plaintiffs have intervened and it is to be recalled that this is a class action. Should the plaintiffs be deprived of education or suffer an interruption in their education they will be handicapped. Concededly, their opportunities in so far as physical equipment and curriculum are concerned, are equal if not superior to those available to children of the white race. It has been held by the Court that segregation of white and colored children in public schools has a detrimental psychological effect upon the colored children. That is primarily the basis upon which the Brown case is founded. It is my belief that at this time a continuation of present methods could not be so harmful as an interrupted education.

Laying aside for the moment the probability of the

schools being closed, in the present state of unrest and racial tension in the county it would be unwise to attempt to force a change of the system until the entire situation can be considered and adjustments gradually brought about. This must be accomplished by the reasonable, clear-thinking people of both races in that locality. This objective can not be achieved quickly. It does not require the opinion of a psychologist to understand that disaffection, uneasiness and uncertainty of the adult world around them creates emotional problems for children concerned. A sudden disruption of reasonably amicable racial relations which have been laboriously built up over a period of more than three and a quarter centuries would be deplorable. At any reasonable cost, it must be avoided.

I conceive the immediate problems of the Court to be to determine whether the School Board is acting in good faith and whether the facts before the Court at this time are such that an order fixing a time limit for compliance with the decree is proper, taking into consideration the various factors outlined in the Brown case to which consideration has been given. I do not conceive it to be within the power of this Court to forecast conditions which may exist in the future. Stated differently, I must reach a conclusion based upon the facts existing at this time in the locality to be affected.

The passage of time with apparent inaction on the part of the defendants of itself does not necessarily show noncompliance. This is illustrated by the fact that after the appeal in this case was granted in May, 1952, more than three years elapsed before the mandate of the Supreme Court was received. I find that the defendants by submitting the usual budget requesting appropriations have done all

that reasonably could be required of them in this period of transition. Action which might cause mixing the schools at this time, resulting in closing them, would be highly and permanently injurious to children of both races. Relations between the members of the two races in the county would be adversely affected and a final solution of the vexing problems delayed as a consequence.

At this time the children of both races are being afforded opportunities for an education under an adequate system that has been formulated over the years. If an order should result in racially integrated schools, the school system of itself would change greatly. Plans should be made to keep within bounds the automatic adjustments that would follow in order that society not be too drastically affected.

Many minds are now engaged in seeking an equitable solution of the problem, including those of the defendants. As was said by a great statesman, "The march of the human mind is slow".[4] It is inconceivable that any of the litigants or other persons affected would willingly see the public school system abolished or an interruption in the education of the children of the county. Either result would be disastrous to both public and private interests of the county.

It is imperative that additional time be allowed the defendants in this case, who find themselves in a position of helplessness unless the Court considers their situation from an equitable and reasonable viewpoint.

Considering all the factors, it is my conclusion that decision of the motion for further relief filed by the plaintiffs

4. Edmund Burke, "Speech on the Conciliation of America"

should be withheld at this time, with the reservation to the plaintiffs of the right to renew the motion at a later date after the defendants have been afforded a reasonable time to effect a solution.

In conclusion, attention is again called to the following language of the Supreme Court which is the law of this case and must be observed:

> "But it should go without saying that the vitality of these constitutional principles can not be allowed to yield simply because of disagreement with them."

ORDER

[R. p. 137]

For reasons stated in the opinion filed herein on January 23, 1957; it is

ORDERED that (a) the Court does not pass on the matters raised in the defendant's motion to dismiss the motion for further relief (including any and all questions involving the constitutionality of the statutes of the Commonwealth of Virginia there mentioned); (b) the motion that a three-judge court be convened to consider and pass on questions before the Court at this time is denied; and (c) the motion for further relief filed by the plaintiffs herein is denied at this time.

It is further ORDERED that this action be retained on the docket of this Court for such further proceedings as may be appropriate.

SUPREME COURT, U.S.
FILED
DEC 31 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, and THOMAS J. McILWAINE, DIVISION SUPERINTENDENT OF SCHOOLS FOR PRINCE EDWARD COUNTY, VIRGINIA,

Petitioners,

v.

EVA ALLEN, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Dated December 31, 1957

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PETITION FOR A WRIT OF CERTIORARI

I.

INTRODUCTION

The County School Board of Prince Edward County, Virginia, and Thomas J. McIlwaine, Division Superintendent of Schools for Prince Edward County, Virginia, hereby petition that a writ of certiorari issue to review a decree of the United States Court of Appeals for the Fourth Circuit entered on November 11, 1957. That decree reversed an order entered by the United States District Court for the Eastern District of Virginia, Richmond Division, on March 26, 1957, denying for the time being a motion for further relief filed by the plaintiffs. The Circuit Court remanded the case to the District Court for further proceedings.

II.

OPINIONS BELOW

The opinion of the District Court (Appendix A) is reported at 149 F. Supp. 431. The opinion of the Circuit Court (Appendix B) has not yet been reported.

Prior proceedings in this case are as reported as follows:

ACTION	DATE	REPORT
Decree of 3-judge District Court denying relief	March 7, 1952	103 F. Supp. 337
Probable jurisdiction noted	October 8, 1952	344 U. S. 1
Assigned for reargument	June 8, 1953	345 U. S. 972
Reversed in principle and assigned for reargument	May 17, 1954	347 U. S. 483
Continued	November 22, 1954	348 U. S. 886
Decision as to relief	May 31, 1955	349 U. S. 294
Dissolution of 3-judge District Court	July 17, 1956	142 F. Supp. 616

An order entered July 18, 1955, by the three-judge District Court on the mandate of this Court is unreported.

III.

JURISDICTION

The opinion of the Court of Appeals is dated November 11, 1957. On December 3, 1957, the Court of Appeals stayed issuance of its mandate on the condition that this Petition be filed within 30 days thereafter. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

IV.

QUESTION PRESENTED

Only a single question is presented by this case:

> In the light of the broad range of judicial discretion granted to District Courts by this Court in its 1955 school segregation decision, was the Circuit Court justified in reversing the action of the District Judge who, on the basis of the facts of record here, refused to order immediate integration in the public schools of Prince Edward County, Virginia?

We submit that the order of the District Judge was proper and that the Circuit Court exceeded its prerogative in setting it aside. Accordingly, the action of the Circuit Court should be reversed.

V.

STATEMENT OF THE CASE

This is one of the original five school segregation cases that came before this Court for three successive terms. As

the Court is well aware, in two opinions the original decision of the three-judge District Court was reversed and the case was returned to the District Court for action in conformity with this Court's second full opinion.

When the matter came back to the three-judge District Court, a number of pleadings were filed (P. A. 1-13[1]). On July 18, 1955, the three-judge District Court entered a final decree as follows:

> "That the defendants be, and they are hereby, restrained and enjoined from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school, from and after such time as the defendants may have made the necessary arrangements for admission of children to such school on a non-discriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause; but the court finds that it would not be practicable, because of the adjustment and rearrangement required for the purpose, to place the Public School System of Prince Edward County, Virginia, upon a non-discriminatory basis before the commencing of the regular school term in September 1955 as requested by the plaintiffs, and the court is of the opinion that the refusal of the court to require such adjustment and rearrangement to be made in time for the said September 1955 school term is not inconsistent with the public interest or with the decision of the Supreme Court. . . ." (P. A. 15)

No appeal was taken from that final order but the matter was retained on the docket. There the matter rested for

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[1] The initials P. A. refer to the Appendix to the Brief for the Appellants (now Respondents) in the Circuit Court; the initials A. A. refer to the Appendix to the Brief for the Appellees (now Petitioners) in that court.

nine months. Then the Respondents, on April 23, 1956, filed a Motion for Further Relief (P. A. 15-24). This motion is the origin of the present appeal. The pleading was a long one. It reviewed prior proceedings in the case. It came then to a review of action considered by the Respondents to be relevant that had been taken by the Commonwealth of Virginia during the preceding nine months. It asserted that no additional time was necessary "in the public interest" in order to effect desegregation (P. A. 23). It accordingly requested immediate desegregation effective with the opening of the schools in the fall of 1956 (*ibid.*).

The Petitioners answered this pleading by a showing of facts (P. A. 24-7; A. A. 12-26). The pattern of State action was reviewed, and developments in Prince Edward County were detailed for the District Court. These facts are set forth at length in the appendix to the brief filed by the Petitioners in the Circuit Court, and they constitute, of course, the factual basis for the decision of the District Court.

The three-judge District Court met and dissolved itself on its own motion since no issue of the constitutionality of a statute remained. Before any decision by the single District Judge, the Petitioners filed a further motion. In it, they asserted that the Respondents had failed to exhaust administrative remedies provided by recent Virginia legislation and to seek remedies available to them under the final order then existing (P. A. 28). The case was then argued and submitted.

The opinion of the District Court is a very careful and thorough one (Appendix A). The Court first reviewed prior proceedings in the case and then came to the recent Virginia legislation. The conclusion reached was that, on

the record as it then was, the effect of those statutes was not before the Court.[2] The District Court then passed to the propriety of granting to the Respondents the specific relief that they sought. The breadth of discretion permitted by the Supreme Court in the light of varying local conditions was detailed. The Court then reviewed conditions in Prince Edward County and the problems presented for its schools. It was clear from the record that, regardless of State statutes, the schools would be closed entirely if integration were to be required. The effect on children and teachers of abandonment of the public schools was weighed. The conclusion reached was that the dangers of granting relief much outweighed the asserted losses of the Respondents. The allowance of additional time was held "imperative." Compliance in future was expected if reasonable time is allowed. Accordingly, no action on the Motion for Further Relief was taken, but the Respondents were given leave to renew it in the future.

This opinion was handed down on January 23, 1957. An order conforming to the opinion was entered on March 26, 1957 (P. A. 48). An appeal was promptly taken to the Circuit Court. That court reversed the District Court, holding that the latter was in error in not fixing a time limit for compliance with the order requiring integration (Appendix B). The court went on to say that voluntary segregation was not constitutionally offensive and that the completion of integration might be postponed if a start is made. It, accordingly, remanded the case to the District Court with directions to the latter to require the Petitioners to make a prompt and reasonable start on the road to integration of the races in the public schools.

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[2] Those statutes and their effect on this case are not presently in issue here.

VI.

THE REASONS FOR THE ALLOWANCE OF THE WRIT

This Court states that when a Circuit Court has decided a federal question in a way in conflict with applicable decisions of this Court, a proper case for review by this Court is presented (Rule 19(1)(b)). Such a case is this, for here, we submit, the Circuit Court did violence to the rule adopted by this Court in this very case (349 U. S. 294 (1955)). The reasons for our position may be briefly stated.

When this case came on for final reargument on the nature of the remedy, a number of alternate proposals had been suggested by the Court. These varied in degree from the entry of a final decree by this Court itself (with or without the assistance of a special master) to remand of the case to the District Court for consideration in the light of the principles announced by this Court and conditions in the locality where the case arose.

This Court refused to take hasty or generalized action; it recognized that any single rule was impossible. It accordingly remanded the case to the District Court for discretionary action. Its reasons for doing so were made clear:

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibilities for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which

originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts." (349 U. S. at p. 299)

This Court was content to give only general directions to the District Courts:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." (*Id.* at p. 300)

These were the rules that the District Court was to apply. The District Court understood them well; it referred to this Court's language as to the variety of local conditions and problems and continued:

"Bearing in mind that the only legal issue in this case pertains to a right guaranteed by the Constitution, this language coupled with the action of the Court, takes on significance which can hardly be over emphasized. It is elementary law that one deprived of a right guaranteed by the Constitution ordinarily is afforded

immediate relief. Notwithstanding this fundamental principle, the Supreme Court in this case has seen fit to specifically declare that while the plaintiffs are entitled to the exercise of a constitutional right, in view of the grave and perplexing problems involved, the exercise of that right must be deferred. With that declaration the Court used equally forceful language indicating that it realizes that conditions vary in different localities. Consequently, instead of simply declaring the right and entering a mandate accordingly, it has seen fit in the exercise of its equity powers to not only defer until a later date the time when the right may be exercised, but to clearly indicate that the time of exercising such right may vary with conditions. A realization of the effect of this action on the part of the Court is of supreme importance to an understanding of the course to be pursued by the Courts of first instance. At the risk of being repetitious, I again recall that: Before laying down those principles, the Court considered and rejected the suggestion that negro children should be forthwith admitted to schools of their choice; rejected the suggestion that it formulate detailed decrees; rejected the suggestion that a special master be appointed by it to hear evidence with a view to recommending specific terms for such decrees and adopted the proposal that the Court in the exercise of equity powers direct an effective gradual adjustment under the order of the Courts of first instance. Further, the Court considered and rejected the suggestion that a specified rule of procedure be established for the District Courts but placed upon those Courts the responsibility of considering, weighing and being guided by conditions found to prevail in each of the several communities to be affected by their decrees."

The District Court then passed to a formulation of the rule established by this Court. It did this with great care as follows:

"Boiled down to its essence, in the Second Brown Case the Court after pointing out that the local school authorities have the primary responsibility of finding a solution to the varied local problems, proceeded to observe that the District Courts are to consider whether the actions of the local authorities are in good faith; and that by reason of their proximity to local conditions those Courts can best appraise the conduct of the local authorities. It is then pointed out that in so appraising, the Courts should be guided by the traditionally flexible principles of equity for adjusting and reconciling public and private needs. To be considered is the personal interest of the plaintiffs, as well as the public interest in the elimination of obstacles in a systematic and effective manner. During this period the Courts should retain jurisdiction of the cases. The Court has here clearly and in unmistakable terms placed upon the District Judges the responsibility of weighing the various factors which prevail in the respective localities affected. There is here a recognition of the obvious fact that in one locality in which conditions permit, a change may be effected almost immediately. In other localities a specified period appropriate in each case may be feasible and a definite time limit fixed accordingly. In yet other communities a greater time for compliance may be found necessary. It is clear that the Court anticipated the application of a test of expediency in such cases so that an orderly change may be accomplished without causing a sudden disruption of the way of life of the multitude of people affected." (P. A. 389)

This was the District Court's analysis of the rules established by this Court. It was a correct analysis. This Court intended that local courts with intimate knowledge of local conditions should have the broad discretion required to apply the general principle that it had established to the facts of a particular situation.

The District Court turned then to the facts of Prince Edward County to which the principle established by this Court had to be applied. It found Prince Edward County to be a locality which has slowly but steadily made an economic recovery from the poverty which prevailed there following the War Between the States. It found that racial relations have improved in recent years and that school facilities now provided for Negro children are equal or superior to those for the white. But public sentiment has changed sharply since the Supreme Court acted, and the school authorities have been hard pressed to keep open the public schools of the County. These officials have no taxing power under Virginia law and, while they prepared and submitted annual budget requests to the Board of Supervisors (the County tax-levying body), funds have been appropriated to the school authorities only on a month to month basis. Moreover, the Board of Supervisors has publicly announced its intention to cut off further appropriations if the County schools are mixed racially at this time. More than 4,000 residents of the County have signed a petition supporting this position of the Board of Supervisors; they are elected, but the school officials are not. The total population of the County is about 15,000 (A. A. 17), so the signers were more than a quarter of all the people. Tentative and substantial plans have been made for a private school system for white pupils in the event of immediate integration, but no similar provision has been made for the Negro. The District Court found it uncontroverted that race relations were more strained than at any time during the present generation. It further found as a fact that, if the requested relief were granted, permanent injury to children of both races would result. It concluded:

> "A sudden disruption of reasonably amicable racial relations which have been laboriously built up over a period of more than three and a quarter centuries would be deplorable. At any reasonable cost, it must be avoided."

This does not mean inaction for an indefinite period. The District Court said:

> "I believe the problems to be capable of solution but they will require patience, time and a sympathetic understanding. They cannot be solved by zealous advocates, by an emotional approach, nor by those with selfish interests to advance. The law has been announced by the Supreme Court and must be observed but the solution must be discovered by those affected under the guidance of sensible leadership. These facts should be self evident to all responsible people."

And it added:

> "Many minds are now engaged in seeking an equitable solution to the problem. . . . It is inconceivable that any of the litigants or other persons affected would willingly see the public school system abolished or an interruption in the education of the children of the county."

The District Court concluded that the appellees "have done all that reasonably could be required of them in this period of transition." That result of necessity follows because:

> "It is imperative that additional time be allowed the defendants in this case, who find themselves in a position of helplessness unless this Court considers their situation from an equitable and reasonable viewpoint."

This is an impressive and thoughtful review of local conditions and an explicit application of the principle established by this Court to those conditions. We turn now to the action of the Circuit Court.

That court made, in essence, only one determination. It said:

> ". . . we think that the District Judge was in error in not fixing a time limit for compliance with the order theretofore entered in the cause."

On this ground the thoughtful action of the District Court was reversed and the case was remanded.

This is the only Virginia school case where the uncontradicted evidence shows that all public schools in the area will be closed if the action ordered by the Circuit Court is carried out. This will result, we state with emphasis, not because of State statutes but because of united local sentiment that will cut off all local funds for the support of the schools. The District Court was well aware of this fact; the Circuit Court merely says that integration must be ordered at once regardless of this fact. It is clear, we submit, that the Federal courts assume a terrible responsibility when they order the closing of public schools. That is what the Circuit Court has done and what this Court will do if the order appealed from here remains in effect. Judges as men must ponder long before acquiescing in this action; theirs is the responsibility for the future of the youth of Prince Edward County.

The question before the Circuit Court was solely whether the District Court had abused its discretion. This Court had established in this case that no fixed time limit was required; the District Court observed the words of this Court and concluded that for the present a fixed time limit

was improper in the facts of this case. The Circuit Court, remote from the scene and unfamiliar with local conditions, says simply that a fixed time limit is required. Virginia's problems, already acute, become critical indeed if the rule of the Circuit Court is the law of the land.

In other situations, the Circuit Court has dealt more tenderly with District Courts. Where District Judges ordered integration, as in Arlington, Charlottesville, Newport News and Norfolk, the Circuit Court found no abuse of discretion.[3] It applauded the action of those courts. Discretion is, however, an area and within that area judges are entitled to form their own opinions; it is not a one-way street. This Court conferred discretion on the District Courts; the Circuit Court says only that integration must come at once.

Those who are familiar with conditions in Prince Edward County or who have read the record in this case will immediately realize that conditions there are difficult in the extreme. The District Court has weighed the factors that it was instructed to weigh by this Court. These factors include the right of Negro children to attend integrated schools as soon as feasible, the overall public interest involved, the necessity for adjustment in attitudes, and the planning required to devise an integrated system. It very properly concluded that integration should not come here at once. This is not due to any fault on the part of the school authorities. Indeed, they are responsible community leaders who have had to fight to keep the public schools of the County open in any manner. This fight has had to be carried on without tax-levying powers and within the framework of State law. The Circuit Court simply cast all this aside as irrelevant.

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[3] *School Board of Charlottesville* v. *Allen*, 240 F. 2d 59 (4th Cir., 1956), cert. denied, 353 U. S. 910, 911 (1957); *School Board of Newport News* v. *Atkins*, 246 F. 2d 325 (4th Cir., 1957), cert. denied, 26 U.S.L.Week 3128 (U.S. Oct. 21, 1957) (No. 361).

The action of the Circuit Court is not merely wrong; it is contrary to this Court's opinion in this case and eliminates the discretion granted by it to local courts. It is important that this Court now reestablish that area of discretion; otherwise in large areas of Virginia and perhaps in other States public schools are now in their last session.

VII.

CONCLUSION

The writ of certiorari should be awarded in this case and the action of the Circuit Court should be reversed. It is only by such action that the Court can preserve the discretionary powers of the District Courts that it was at such pains to establish.

Dated December 31, 1957.

Respectfully submitted,

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APPENDIX A

Opinion of the United States District Court for the Eastern District of Virginia

Opinion of the United States District Court for the Eastern District of Virginia

HUTCHESON, Chief Judge: This case originated in the Richmond Division upon the filing of a complaint on May 21, 1951. The declared object of the complaint was, in substance, to obtain a declaratory judgment holding that segregation of pupils in the public schools in the county by races constituted discrimination in violation of the Fourteenth Amendment to the Constitution of the United States. There were also allegations concerning the inequality of school facilities, which last constituted a somewhat unimportant part of the controversy.

The case was heard February 25-29, 1952, by a three-judge court, which had been convened in accordance with the provisions of the statute. The opinion of that Court was filed on March 7, 1952, and is reported in *103 Fed. Supp. 337*. An appeal was allowed on May 5, 1952, and on May 17, 1954, the Supreme Court handed down its opinion, reversing the findings and conclusions of this Court, the case having been consolidated with four other cases then pending before it. See *Brown* v. *Board of Education, 347 U. S., 483*. At the suggestion of the Court the case was further argued as to specific questions hereafter more fully discussed, and the Court filed its second opinion on May 31, 1955. *349 U. S., 294*. The mandate having been received by this Court on June 28, 1955, the case was called for further proceedings and on July 18, 1955, the three-judge court entered an order directing compliance with the terms of the mandate, but finding that it was not practicable to effect a change in the operation of the public schools of the county during the session beginning September 1955.

On April 23, 1956, plaintiffs filed a motion seeking an

order fixing a time limit within which compliance with the order should be had, to which answer of the defendants was filed on June 29, 1956. On July 9, 1956, the three-judge court was reconvened and, pursuant to order previously entered, heard argument on the sole question of whether it should continue to function or if the case should be returned to the resident District Judge in whose division suit was instituted. On July 19, 1956, the Court announced its unanimous decision that since the constitutional question involved had been determined, the three-judge court should no longer function and the matter should be heard by the resident District Judge. On October 17, 1956, defendants filed a motion seeking the dismissal of the case upon the ground that the General Assembly of Virginia in extra session 1956 had provided the plaintiffs an adequate remedy at law in the courts of the Commonwealth.

The respective motions were argued on November 14, 1956, and the case is now before me as the resident District Judge for disposition of the motions upon the pleadings and certain exhibits which have been filed pertaining to the motions.

I am mindful that other District Courts have dealt with similar cases but in each case the Court was dealing with the record before it and with the problems of the particular locality affected by its order. Consequently, those decisions afford little, if any, aid in dealing with this case.

The questions raised by the supplemental answer and motion to dismiss the motion for further relief filed by the defendants on October 17, 1956, and the arguments thereon, may be stated as follows:

(a) Should the three-judge District Court be reconvened?

(b) Are certain statutes passed by the General Assembly of Virginia in extra session 1956 constitutional?; and

(c) Should plaintiffs be required to exhaust administrative remedies provided by the state statutes?

I shall first consider the questions presented in the last mentioned motion in the order stated.

From an examination of the applicable statute (*Title 28, Section 2281, United States Code*), and upon consideration of its purpose I reach the conclusion that in the present state of the record in this case it is not appropriate to request the convening of a three-judge court. There is no application before me for an order to restrain or enjoin the action of any officer of the state in the enforcement or execution of any state statute or order such as contemplated by the Act of Congress.

In the present state of the record of this particular case I do not consider the constitutionality of the state statutes referred to or the relief there provided proper subjects of inquiry. They were the subject of argument at the hearing on November 14, 1956, and I shall dispose of the questions so raised without extended discussion.

The situation before me was aptly summed up by Judge Parker in *Carson* v. *Warlick*, decided November 14, 1956, in which he used the following language:

> "It is argued that the Pupil Enrollment Act is unconstitutional; but we can not hold that that statute is unconstitutional upon its face and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked."

And further:

"It is to be presumed that these (the officials of the schools and the school boards) will obey the law, observe the standard prescribed by the legislature, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration. As said by the Supreme Court in *Brown, et al* v. *Board of Education, et al*, 349 U. S., 294, 299:

"'School authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.'"

The opinion in *The School Board of the City of Charlottesville, et al* v. *Doris Marie Allen, et al, and County School Board of Arlington County, Virginia, et al* v. *Clarissa S. Thompson, et al (4th Cir.) decided December 31, 1956*, contains language pertinent here. The Court again speaking through Chief Judge Parker, in referring to administrative remedies provided under Section 22-27 of the Code of Virginia, and after pointing out that the pupil placement law recently enacted by the General Assembly of Virginia had not become effective when the cases were heard (although it was effective at the time that opinion was rendered, as is the situation here) said:

"* * *. Reliance is placed upon our decision in *Carson* v. *Warlick*, 4 Cir. F. 2d. . In that case, however, an adequate administrative remedy had been prescribed by statute, the plaintiffs there had failed

to pursue the remedy as outlined in the decision of the Supreme Court of the State and *there was nothing upon which a court could say that if they had followed such remedy their rights under the Constitution would have been denied them.*" (Emphasis supplied)

See also *Hood* v. *Board of Trustees, etc.*, 232 Fed. (2d), 626 (4th Cir.), and *Robinson* v. *Board of Education, etc.*, 143 Fed. Supp., 481 (District of Maryland).

The quoted language appears in point in so far as the constitutional question is concerned. While the statutes involved are not identical, the principle announced is applicable.

Turning to the proposal that the plaintiffs be required to exhaust the administrative remedies provided by the state statutes, I am again confronted by the record before me. Being of opinion I am not in a position to pass upon the constitutionality of the statutes setting up the administrative remedy, it is my thought that I should not undertake to require the plaintiffs to seek any particular remedy. They are free to do so and thereby test the constitutionality of the statutes should they desire. However, that is a right, not an obligation. In the meantime, this is a matter of school administration in which I should not interfere.

It follows that the motion of the defendants to dismiss the motion for further relief should not be granted at this time. However, I incline to the view that instead of being dismissed it should be retained on the docket of the Court for final disposition at a later time should further proceedings develop an issue properly determinable in this case.

In undertaking to approach a solution to the troublesome problems involved in this case which are presented by the record and properly before me for determination, including the motion for further relief filed by the plaintiffs, it is to

be borne in mind that the Supreme Court has decided only one legal principle which is concisely stated in the syllabus appearing in *347 U. S., 483*, as follows:

> "Segregation of white and Negro children in the public schools of a state solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to negro children the equal protection of the laws guaranteed by the Fourteenth Amendment * * *."

A study of the opinions of May 17, 1954, and May 31, 1955, reveals no other principle of law to serve as precedent or landmark in undertaking to apply the law to the facts, although certain well-recognized equitable principles are mentioned. For a clearer understanding of the question here presented, some discussion of those opinions at this point may be helpful.

In the 1954 opinion, which will be referred to as the First Brown Case, at page 495, the Court, after stating that "because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity", requested counsel to present further argument on questions which may be briefly summarized as follows: Whether a decree would necessarily follow providing that negro children should forthwith be admitted to schools of their choice, or whether the Court should permit an effective gradual adjustment to be brought about to a system not based on color distinctions; whether the Supreme Court should formulate detailed decrees in the cases; if so, what specific issues should be reached thereby; if the appointment of a special master to hear evidence with a view of recommending specific terms for the decrees

would be desirable; and finally, whether that Court should remand the cases to the courts of first instance with directions to frame decrees, and if that policy were followed, what general directions should the decrees of the Supreme Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees. For full text of the questions propounded and argued see *345 U. S., 972*.

Following elaborate argument upon these questions, in which the Attorneys General of the affected states and the Solicitor General of the United States presented their views, the Court filed its opinion on May 31, 1955, which will be referred to as the Second Brown Case. With knowledge of what was considered by the Court, as revealed by the questions, the language of the opinion in the Second Brown Case takes on added significance, both with respect to what was not said as well as to what was said. Certain portions of that opinion follow:

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts."

The Court then proceeded to announce the following principles which should receive attention of the District Courts:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

From the foregoing it is clear that the law must be enforced but the Court is acutely conscious of the variety of problems of a local nature constituting factors to be considered in the enforcement. Further emphasis upon this point is found on *page 298*, where the Court said:

"Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief."

Bearing in mind that the only legal issue in this case pertains to a right guaranteed by the Constitution, this language coupled with the action of the Court, takes on

significance which can hardly be over emphasized. It is elementary law that one deprived of a right guaranteed by the Constitution ordinarily is afforded immediate relief. Notwithstanding this fundamental principle, the Supreme Court in this case has seen fit to specifically declare that while the plaintiffs are entitled to the exercise of a constitutional right, in view of the grave and perplexing problems involved, the exercise of that right must be deferred. With that declaration the Court used equally forceful language indicating that it realizes that conditions vary in different localities. Consequently, instead of simply declaring the right and entering a mandate accordingly, it has seen fit in the exercise of its equity powers to not only defer until a later date the time when the right may be exercised, but to clearly indicate that the time of exercising such right may vary with conditions. A realization of the effect of this action on the part of the Court is of supreme importance to an understanding of the course to be pursued by the Courts of first instance. At the risk of being repetitious, I again recall that: Before laying down those principles, the Court considered and rejected the suggestion that negro children should be forthwith admitted to schools of their choice; rejected the suggestion that it formulate detailed decrees; rejected the suggestion that a special master be appointed by it to hear evidence with a view to recommending specific terms for such decrees and adopted the proposal that the Court in the exercise of equity powers direct an effective gradual adjustment under the order of the Courts of first instance. Further, the Court considered and rejected the suggestion that a specified rule of procedure be established for the District Courts but placed upon those Courts the responsibility of considering, weighing and being guided by conditions found to prevail in each of the several communities to be affected by their decrees.

In the absence of precedent, in undertaking to follow the mandate of the Supreme Court, the District Courts are confronted with the necessity of following an uncharted course in applying the sole legal principle announced in the First Brown Case. One idea which emerges clearly is that procedural rules adopted in one locality may be altogether inapplicable to conditions in another.

Boiled down to its essence, in the Second Brown Case the Court after pointing out that the local school authorities have the primary responsibility of finding a solution to the varied local problems, proceeded to observe that the District Courts are to consider whether the actions of the local authorities are in good faith; and that by reason of their proximity to local conditions those Courts can best appraise the conduct of the local authorities. It is then pointed out that in so appraising, the Courts should be guided by the traditionally flexible principles of equity for adjusting and reconciling public and private needs. To be considered is the personal interest of the plaintiffs, as well as the public interest in the elimination of obstacles in a systematic and effective manner. During this period the Courts should retain jurisdiction of the cases. The Court has here clearly and in unmistakable terms placed upon the District Judges the responsibility of weighing the various factors which prevail in the respective localities affected. There is here a recognition of the obvious fact that in one locality in which conditions permit, a change may be effected almost immediately. In other localities a specified period appropriate in each case may be feasible and a definite time limit fixed accordingly. In yet other communities, a greater time for compliance may be found necessary. It is clear that the Court anticipated the application of a test of expediency in such cases so that an orderly change may be accomplished

without causing a sudden disruption of the way of life of the multitude of people affected.

While the Supreme Court made no reference to yet another interest, there is one of a semi-public nature. This involves the teachers of the county, both white and colored, and their families, dependent upon them for support.

The conflicting rights and interests of racial and national groups in this country is nothing new. It is not confined to the negro race but numerous illustrations might be used. A striking illustration is found in the situation of persons of Oriental origin who have come to this country. It is worthy of passing note to recall that the opinion appearing in the official reports immediately preceding the First Brown Case involves the rights of persons of Mexican descent. *Hernández v. Texas*, 347 U. S., 475. It must be borne in mind that these conflicts and the cases arising therefrom are the result of customs, traditions, manners and emotions which have existed for generations. In this particular case the customs to be changed have been not only generally accepted but repeatedly and expressly declared the law of the land since 1896.[1] While lawyers may have been conscious of the evolution of the law during this period and prepared to anticipate the possibility of a change, the average layman affected may not be charged with such prescience. Patience, time and a sympathetic approach are imperative to accomplish a change of conditions in an orderly and peaceful manner and with a minimum of friction.

In seeking a solution it is necessary to know and to understand the background upon which the factual situation is cast. In this connection it is necessary to examine briefly the present conditions in Prince Edward County, Virginia.

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[1] *Plessy v. Ferguson*, 163 U. S., 537; *Gong Lum v. Rice*, 275 U. S., 78.

historically and as revealed by the record in this case.[2]

Prince Edward County being inland from the easily navigable tidal reaches of the streams watering that region, was not settled until the first half of the 18th century, after the power of the Indians had been broken. At that time the pattern of life in the Colony had become established and the early residents carried with them the manners and customs prevailing in the more populous regions of Virginia. By 1783 the population consisted of 1,552 white and 1,468 colored residents. The 1950 census showed a population of 15,396, with the white and colored races approximately equal in number. During the intervening years the relations between the races have been harmonious, with a minimum of friction and tension as compared with some regions. During several decades prior to the War Between the States the processes of orderly and gradual adjustment which were becoming increasingly evident were interrupted by being involved in the political issues confronting the growing nation, with particular reference to regional differences and the clash of economic rivalries of various sections. Unfortunately this resulted in accentuating racial tension and hostility which became somewhat acute at times. While these conditions were common to the southeastern and southern parts of the country, it was felt less in Prince Edward and the surrounding area than in many other sections.

In the days following 1861-65 the entire section was poverty stricken. For the rank and file of both races there was a struggle for existence and education was of secondary importance. It is true that in this situation with the local government controlled by members of the white race and

[2] See "History of Prince Edward County, Virginia"—Herbert Clarence Bradshaw—1955.

with severely limited means, there was inequality in the division, but members of the negro race were not excluded from sharing, although to a lesser extent. This was due in part to an understandable, if erroneous, feeling that those upon whom the greater tax burden fell should receive the greater benefit. During the second quarter of the present century the economy of the section most seriously concerned has shown a marked improvement. Due to that improvement, corresponding advantages have resulted in housing, education and knowledge on the part of both races. Marked improvement in racial relationship resulted although many firmly fixed ancient customs and manners remain. With an improvement in the economic condition of the county and the resulting increase in available financial resources, an awareness of public sentiment, the mandatory requirements of the Virginia constitution and statutes upon the subject, coupled with suits brought in Federal Courts in other localities, the responsible authorities of Prince Edward County made plans for the erection of new school buildings exclusively for negroes, which are now concededly equal if not superior to those occupied by the white pupils.

Before these plans could be completed, this suit was filed. Since the decision in the Brown case these plans have been completed. The defendants, who are the Superintendent and members of the School Board, and as such charged with the "primary responsibility for elucidating, assessing and solving" their problems, have proceeded with the operation of the schools in the county in accordance with the practice which has prevailed. They have prepared and submitted to the Board of Supervisors of the county annual budgets for the operation of the schools. In this connection it is to be borne in mind that the defendants have no authority under the law to levy or assess taxes nor to raise funds except in a limited manner by borrowing under certain con-

ditions not pertinent here. Responsibility for providing local funds for the operation of schools rests upon the Board of Supervisors who are not defendants before this Court. The School Board consists of members appointed by the school trustee electoral board, the members of which in turn are appointed by the local state court. The members of the Board of Supervisors are elected by the people. Buttressed by popular demand of the people of the county since the decision in the First Brown Case, evidence in part by a petition signed by more than 4,000 residents, the Board of Supervisors has declined to allocate funds for the operation of schools on an annual basis. Instead it appropriates the necessary operating expenses on a monthly basis, with a publically declared intention of discontinuing such appropriation if schools in the county are mixed racially at this time. In this connection attention is invited to the statutes recently enacted by the Virginia General Assembly under which the funds provided by the state may be withheld. Pending final interpretation of those statutes, time valuable in the educational opportunities of the children involved might be irretrievably lost. Affidavits filed in this case and in no way controverted or mentioned by counsel for the plaintiffs, declare racial relations in the county to be more strained than at any time during the present generation.

In this state of facts I am called upon to fix a time when the defendants should be required to comply with the terms of the injunction issued by the three-judge court in obedience to the mandate of the Supreme Court. To do this I am to "adjust and reconcile public and private needs", by weighing and considering the personal interests of the plaintiffs as well as the interest of the public, in the elimination of obstacles in order that there may be a systematic, orderly and effective transition of the school system in accordance with the constitutional principles announced in the Brown case.

I believe the problems to be capable of solution but they will require patience, time and a sympathetic understanding. They can not be solved by zealous advocates, by an emotional approach, nor by those with selfish interests to advance. The law has been announced by the Supreme Court and must be observed but the solution must be discovered by those affected under the guidance of sensible leadership. These facts should be self evident to all responsible people.

The children of both races, constituting an entire generation of this county, are the persons to be affected by whatever action may be taken and it follows that theirs is the real interest at stake, although closely connected with that of their parents and guardians.

Should the public schools of the county be closed for any reason, approximately three thousand children, including those of an age at which they are peculiarly impressionable, will be released from attendance. An interrupted education of one year or even six months at that age places a serious handicap upon the child which the average one may not overcome. Among those of the older group there are some for whom it will mean the end of an education. Should the schools be resumed after an interruption, those among the younger group will be retarded in acquiring an education as compared with their contemporaries in other communities. With the release from discipline brought about by compulsory attendance at school, problems concerning juvenile conduct will be intensified with resulting injury to both children and the community and a resulting increase of racial tension with members of each race blaming the other for the lack of schools. In this connection it is to be remembered that the police protection of rural communities is different from that afforded in more populous areas. The salaries paid teachers in the state are not such as to enable them to accumulate a fund sufficient to support

themselves and their families over a protracted period of unemployment. Loss of employment would be a serious consequence to many teachers of both races who are established in the community. Tentative and substantial plans have been made for continuation by private means of the education of white children of the county. There is no such provision for negro children. These considerations all involve the public and private interests of the community as distinguished from the quandary of the members of the School Board.

The admonition of the Supreme Court that the personal interests of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis is a consideration of which I am mindful. In response to a question from the bench, counsel for the plaintiffs stated that so far as he knew none of the original plaintiffs are now attending the schools. However, additional named plaintiffs have intervened and it is to be recalled that this is a class action. Should the plaintiffs be deprived of education or suffer an interruption in their education they will be handicapped. Concededly, their opportunities in so far as physical equipment and curriculum are concerned, are equal if not superior to those available to children of the white race. It has been held by the Court that segregation of white and colored children in public schools has a detrimental psychological effect upon the colored children. That is primarily the basis upon which the Brown case is founded. It is my belief that at this time a continuation of present methods could not be so harmful as an interrupted education.

Laying aside for the moment the probability of the schools being closed, in the present state of unrest and racial tension in the county it would be unwise to attempt to force a change of the system until the entire situation can be considered and adjustments gradually brought about. This must be accomplished by the reasonable, clear-thinking people of

both races in that locality. This objective can not be achieved quickly. It does not require the opinion of a psychologist to understand that disaffection, uneasiness and uncertainty of the adult world around them creates emotional problems for children concerned. A sudden disruption of reasonably amicable racial relations which have been laboriously built up over a period of more than three and a quarter centuries would be deplorable. At any reasonable cost, it must be avoided.

I conceive the immediate problems of the Court to be to determine whether the School Board is acting in good faith and whether the facts before the Court at this time are such that an order fixing a time limit for compliance with the decree is proper, taking into consideration the various factors outlined in the Brown case to which consideration has been given. I do not conceive it to be within the power of this Court to forecast conditions which may exist in the future. Stated differently, I must reach a conclusion based upon the facts existing at this time in the locality to be affected.

The passage of time with apparent inaction on the part of the defendants of itself does not necessarily show non-compliance. This is illustrated by the fact that after the appeal in this case was granted in May, 1952, more than three years elapsed before the mandate of the Supreme Court was received. I find that the defendants by submitting the usual budget requesting appropriations have done all that reasonably could be required of them in this period of transition. Action which might cause mixing the schools at this time, resulting in closing them, would be highly and permanently injurious to children of both races. Relations between the members of the two races in the county would be adversely affected and a final solution of the vexing problems delayed as a consequence.

At this time the children of both races are being afforded opportunities for an education under an adequate system that has been formulated over the years. If an order should result in racially integrated schools, the school system of itself would change greatly. Plans should be made to keep within bounds the automatic adjustments that would follow in order that society not be too drastically affected.

Many minds are now engaged in seeking an equitable solution of the problem, including those of the defendants. As was said by a great statesman, "The march of the human mind is slow".[3] It is inconceivable that any of the litigants or other persons affected would willingly see the public school system abolished or an interruption in the education of the children of the county. Either result would be disastrous to both public and private interests of the county.

It is imperative that additional time be allowed the defendants in this case, who find themselves in a position of helplessness unless the Court considers their situation from an equitable and reasonable viewpoint.

Considering all the factors, it is my conclusion that decision of the motion for further relief filed by the plaintiffs should be withheld at this time, with the reservation to the plaintiffs of the right to renew the motion at a later date after the defendants have been afforded a reasonable time to effect a solution.

In conclusion, attention is again called to the following language of the Supreme Court which is the law of this case and must be observed:

> "But it should go without saying that the vitality of these constitutional principles can not be allowed to yield simply because of disagreement with them."

[3] Edmund Burke—"Speech on the Conciliation of America."

APPENDIX B

Opinion of the United States Court of Appeals for the Fourth Circuit

Opinion of the United States Court of Appeals for the Fourth Circuit

Before PARKER, Chief Judge, HAYNSWORTH, Circuit Judge, and HARRY E. WATKINS, District Judge.

PER CURIAM:

This action was commenced to enjoin racial segregation in the public schools of Prince Edward County, Virginia, on the ground that provisions of the state constitution and statutory code requiring such segregation were violative of the 14th Amendment to the Constitution of the United States and therefore void. A court of three judges was properly constituted, as required by 28 USC sections 2281 and 2284, and judgment was entered denying the relief sought. See *Davis* v. *County School Board of Prince Edward County*, D. C., 103 F. Supp. 337. This judgment was reversed by the Supreme Court and the case was remanded for further proceedings. *Brown* v. *Board of Education of Topeka*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 1083. On the remand the court of three judges entered a decree which vacated and set aside its original decree, declared invalid the constitutional and statutory provisions requiring segregation in the schools, and enjoined and restrained the defendants from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school "from and after such time as the defendants may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause". The court found that it would not be practicable to require that this provision be made effective before the commencement of the school term

order was not otherwise affected. The case was retained on the docket for the entry of further orders which might be necessary in the enforcement of the decree. In July, 1956 the court of three judges was dissolved and order was entered that further proceedings in the case be had before a single District Judge. *Davis* v. *County School Board of Prince Edward County*, D. C., 142 F. Supp. 616.

After the dissolution of the three judge court, the case came on for hearing before the District Judge on a motion of plaintiffs for an order fixing a time limit for compliance with the order theretofore entered, and a motion of defendants that the motions of plaintiff be dismissed for failure to comply with the Pupil Placement Act, ch. 70 of the Acts of Assembly of Virginia, Extra Session 1956. On the hearing of the motions, the question was raised as to whether the court of three judges should be reconvened. The District Judge held that the court of three judges need not be reconvened, declined to pass on the applicability of the Pupil Placement Act, and denied the motion for an order fixing a time limit for compliance with the order theretofore entered because of opposition to the order and racial tension prevailing in the community and the possible closing of the schools under Virginia Statutes, if the order were enforced.

The holding of the judge that the three judge court need not be reconvened was unquestionably correct. We have recently held, however, that the Pupil Placement Act provides no adequate administrative remedy. *School Board of Newport News* v. *Atkins*, 4 Cir., 246 F. 2d 325, cert. den. U. S. ( ); and we think that the District Judge was in error in not fixing a time limit for compliance with the order theretofore entered in the cause. As pointed out by Judge Joseph C. Hutcheson of Texas in *Jackson* v. *Rozelon*, 5 Cir., 235 F. 2d 93, 96, plaintiffs were entitled to have the school board "acting promptly, and completely uninfluenced

by private and public opinion as to the desirability of desegregation in the community, proceed with deliberate speed consistent with administration * * *." We quoted this with approval in *School Board of City of Charlottesville* v. *Allen*, 4 Cir., 240 F. 2d 59, 64, where we said:

> "It had been two years since the first decision of the Supreme Court in Brown v. Board of Education and, despite repeated demands upon them, the boards of education had taken no steps towards removing the requirement of segregation in the schools which the Supreme Court had held violative of the constitutional rights of the plaintiffs. This was not 'deliberate speed' in complying with the law as laid down by the Supreme Court but was clear manifestation of an attitude of intransigence, which justified the issuance of the injunctions to dispel the misapprehension of school authorities as to their obligations under the law and to bring about their prompt compliance with constitutional requirements as interpreted by the Supreme Court."

In the case at bar the order entered on June 29, 1955, while finding that it was impracticable to place the schools on a nondiscriminatory basis before September 1955, enjoined the defendants "from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school, from and after such time as the defendants may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause." More than a year and a half had elapsed after the entry of this order, the school year of 1955-56 had come and gone,

another school year had been entered, and no steps had been taken to comply with the order. The time had unquestionably come to say plainly to the defendants that they must comply without further delay.

This does not mean that the defendants should require mixing of white and Negro children in the schools but merely that they should abolish the requirement of discrimination. If the children of the different races should voluntarily attend different schools, this would not be violative of the Constitution or of the court's order, so long as there was no requirement of the school authorities to that effect. Furthermore, it would not be necessary for the requirement as to segregation to be removed at once with respect to all grades in the schools, if a reasonable start were made to that end with "deliberate speed" considering the problems of proper administration. See order in the Arlington case, approved by this court, 240 F. 2d at 61, also *Aaron* v. *Cooper*, 8 Cir. 243 F. 2d 361.

The fact that the schools might be closed if the order were enforced is no reason for not enforcing it. A person may not be denied enforcement of rights to which he is entitled under the Constitution of the United States because of action taken or threatened in defiance of such rights.

The order appealed from will accordingly be reversed and the case will be remanded to the court below with direction to enter an order directing defendants to make a prompt and reasonable start toward complying with the court's order enjoining discrimination on the ground of race or color in admitting children to the schools under their supervision.

Reversed and Remanded with Directions.